

Union Calendar No. 74

104TH CONGRESS
1ST SESSION

H. R. 1062

[Report No. 104-127, Parts I, II, and III]

A BILL

To enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers.

JUNE 22, 1995

Reported with an amendment without recommendation, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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To enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 1995

Mr. LEACH introduced the following bill; which was referred to the Committee on Banking and Financial Services and, in addition, to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

MAY 18, 1995

Reported from the Committee on Banking and Financial Services with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

MAY 18, 1995

Referral to the Committee on Commerce extended for a period ending not later than June 16, 1995

JUNE 16, 1995

Referral to the Committee on Commerce extended for a period ending not later than June 22, 1995

JUNE 22, 1995

Reported from the Committee on Commerce with an amendment without recommendation, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 27, 1995]

A BILL

To enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the “Fi-*
 5 *nancial Services Competitiveness Act of 1995”.*

6 (b) *TABLE OF CONTENTS.*—*The table of contents for*
 7 *this Act is as follows:*

Sec. 1. Short title; table of contents.

*TITLE I—BANK SECURITIES ACTIVITIES AND AFFILIATIONS WITH
SECURITIES FIRMS AND OTHER FINANCIAL COMPANIES*

Subtitle A—Securities Activities

Sec. 101. Anti-affiliation provision of the Banking Act of 1933 repealed.

Sec. 102. Financial services holding companies authorized to have securities af-
filates.

Sec. 103. Establishment and operations of securities affiliates.

Sec. 104. Safeguards relating to securities affiliates.

Sec. 105. Ownership of shares of certain companies by financial services holding
companies.

Sec. 106. Provisions applicable to limited purpose banks.

Sec. 107. Securities company affiliations of FDIC—insured banks.

Sec. 108. Authority to terminate grandfather rights under the International
Banking Act of 1978.

Sec. 109. Effect on State laws prohibiting the affiliation of banks and securities
companies.

Sec. 110. Municipal securities.

Sec. 111. Interagency agreement relating to retail sales of certain nondeposit in-
vestment products.

Sec. 112. Effective date.

Subtitle B—Investment Bank Holding Companies

Sec. 116. Investment bank holding companies.

Sec. 117. Wholesale financial institutions.

Subtitle C—Financial Activities

Sec. 121. Financial activities.

Sec. 122. No prior approval required for well capitalized and well managed financial services holding companies.

Sec. 123. Streamlined examination and reporting requirements for all financial services holding companies.

Sec. 124. Holding company supervision for financial services holding companies engaged primarily in nonbanking activities.

Sec. 125. Conversion of unitary savings and loan holding companies to financial services holding companies.

Sec. 126. Financial services advisory committee.

Sec. 127. Coordination with State law.

Sec. 128. Conforming amendments to the Bank Holding Company Act of 1956.

Sec. 129. Conforming amendments to the Bank Holding Company Act Amendments of 1970.

Sec. 130. Credit cards for business purposes.

Subtitle D—Interagency Banking and Financial Services Advisory Committee

Sec. 141. Interagency banking and financial services advisory committee.

TITLE II—FUNCTIONAL REGULATION

Subtitle A—Brokers and Dealers

Sec. 201. Definition of broker.

Sec. 202. Definition of dealer.

Sec. 203. Power to exempt from the definitions of broker and dealer.

Sec. 204. Margin requirements.

Sec. 205. Effective date.

Subtitle B—Bank Investment Company Activities

Sec. 211. Custody of investment company assets by affiliated bank.

Sec. 212. Indebtedness to affiliated person.

Sec. 213. Lending to an affiliated investment company.

Sec. 214. Independent directors.

Sec. 215. Additional SEC disclosure authority.

Sec. 216. Definition of broker under the Investment Company Act of 1940.

Sec. 217. Definition of dealer under the Investment Company Act of 1940.

Sec. 218. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.

Sec. 219. Definition of broker under the Investment Advisers Act of 1940.

Sec. 220. Definition of dealer under the Investment Advisers Act of 1940.

Sec. 221. Interagency consultation.

Sec. 222. Treatment of bank common trust funds.

Sec. 223. Investment advisers prohibited from having controlling interest in registered investment company.

Sec. 224. Conforming change in definition.

Sec. 225. Effective date.

1 ***TITLE I—BANK SECURITIES AC-***
2 ***TIVITIES AND AFFILIATIONS***
3 ***WITH SECURITIES FIRMS AND***
4 ***OTHER FINANCIAL COMPA-***
5 ***NIES***

6 ***Subtitle A—Securities Activities***

7 ***SEC. 101. ANTI-AFFILIATION PROVISION OF THE BANKING***
8 ***ACT OF 1933 REPEALED.***

9 (a) *SECTION 20 REPEALED.*—Section 20 (12 U.S.C.
10 377) of the Banking Act of 1933 (commonly referred to as
11 the “Glass-Steagall Act”) is repealed.

12 (b) *CONFORMING AMENDMENT TO SECTION 32.*—Sec-
13 tion 32 (12 U.S.C. 78) of the Banking Act of 1933 is
14 amended by adding at the end the following sentence: “This
15 section shall not apply so as to prohibit an officer, director,
16 or employee of a securities affiliate (as defined in section
17 2 of the Financial Services Company Act of 1995) from
18 serving at the same time as an officer, director, or employee
19 of a member bank affiliated with that securities affiliate
20 pursuant to section 10 of such Act. This section shall not
21 apply so as to prohibit an officer, director, or employee of
22 an investment company registered under the Investment
23 Company Act of 1940 or an investment adviser registered
24 under the Investment Advisers Act of 1940 from serving at

1 *the same time as an officer, director, or employee of a mem-*
 2 *ber bank.”.*

3 **SEC. 102. FINANCIAL SERVICES HOLDING COMPANIES AU-**
 4 **THORIZED TO HAVE SECURITIES AFFILIATES.**

5 *Section 4(c) of the Bank Holding Company Act of*
 6 *1956 (12 U.S.C. 1843(c)) is amended—*

7 *(1) by striking “or” at the end of paragraph*
 8 *(13);*

9 *(2) by striking the period at the end of para-*
 10 *graph (14) and inserting “; or”; and*

11 *(3) by adding after paragraph (14) the following*
 12 *new paragraph:*

13 *“(15) shares of a securities affiliate in accord-*
 14 *ance with section 10.”.*

15 **SEC. 103. ESTABLISHMENT AND OPERATIONS OF SECURI-**
 16 **TIES AFFILIATES.**

17 *(a) IN GENERAL.—Section 10 of the Bank Holding*
 18 *Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended*
 19 *to read as follows:*

20 **“SEC. 10. SECURITIES ACTIVITIES.**

21 *“(a) ACTIVITIES PERMISSIBLE FOR SECURITIES AF-*
 22 *FILIATES.—*

23 *“(1) IN GENERAL.—A securities affiliate may en-*
 24 *gage in 1 or more of the following activities:*

1 “(A) Underwrite, deal in, broker, place, or
2 distribute securities of any type, provide invest-
3 ment advice regarding securities of any type,
4 and engage in other securities activities as deter-
5 mined by the Board.

6 “(B) Sponsor, organize, control, manage,
7 and act as investment adviser to an investment
8 company.

9 “(C) Engage in, or acquire the shares of a
10 company engaged in, any activity if—

11 “(i) a provision of section 4(c) permits
12 financial services holding companies gen-
13 erally to engage in that activity or acquire
14 those shares; and

15 “(ii) either—

16 “(I) the Board permits the finan-
17 cial services holding company to en-
18 gage in that activity or acquire those
19 shares through the securities affiliate;
20 or

21 “(II) a provision of section 4(c)
22 permits the financial services holding
23 company to engage in such activity or
24 acquire such shares without the
25 Board’s approval.

1 “(2) *FACTOR TO BE CONSIDERED.*—In making
 2 determinations pursuant to this section, the Board
 3 shall take into account the need for securities firms
 4 affiliated with banks to be innovative and competi-
 5 tive.

6 “(b) *ACQUIRING INTEREST IN SECURITIES AFFILI-*
 7 *ATE.*—

8 “(1) *NOTICE REQUIRED.*—A financial services
 9 holding company shall not, without complying with
 10 and receiving approval pursuant to the notice proce-
 11 dure in section 4(j)(1), directly or indirectly acquire
 12 or retain more than 5 percent of the voting shares of,
 13 or all or substantially all of the assets of, a securities
 14 affiliate (or a company that would be a securities af-
 15 filiate if the Board permitted the financial services
 16 holding company to acquire that company).

17 “(2) *CRITERIA FOR APPROVAL.*—The Board shall
 18 disapprove a notice required under paragraph (1) un-
 19 less the Board determines that the requirements of the
 20 following subparagraphs have been met:

21 “(A) *CAPITAL.*—

22 “(i) *DEPOSITORY INSTITUTIONS.*—

23 “(I) *The lead depository institu-*
 24 *tion of the financial services holding*
 25 *company is well capitalized.*

1 “(II) Well capitalized depository
2 institutions control at least 80 percent
3 of the aggregate total risk-weighted as-
4 sets of depository institutions con-
5 trolled by the financial services holding
6 company.

7 “(III) All depository institutions
8 controlled by the financial services
9 holding company are well capitalized
10 or adequately capitalized.

11 “(ii) RECENTLY ACQUIRED DEPOSI-
12 TORY INSTITUTIONS.—Depository institu-
13 tions acquired by a financial services hold-
14 ing company during the 12-month period
15 preceding the submission of a notice under
16 paragraph (1) may be excluded for purposes
17 of clause (i)(II) if—

18 “(I) the financial services holding
19 company has submitted a plan to the
20 appropriate Federal banking agency to
21 restore the capital of the institution
22 and the plan has been accepted by such
23 agency; and

24 “(II) all such institutions that are
25 excluded for the purposes of clause

1 (i)(II) represent, in the aggregate, less
2 than 25 percent of the aggregate total
3 risk-weighted assets of all depository
4 institutions controlled by the financial
5 services holding company.

6 “(iii) *FINANCIAL SERVICES HOLDING*
7 *COMPANY.*—The financial services holding
8 company is (and immediately after the ac-
9 quisition of a securities affiliate would con-
10 tinue to be) adequately capitalized under
11 the capital standards applicable, if any, to
12 such financial services holding company.

13 “(iv) *FOREIGN BANKS AND COMPA-*
14 *NIES.*—For purposes of applying this sub-
15 section and other provisions of this section,
16 the Board shall establish and apply com-
17 parable capital standards for the acquisi-
18 tion, retention, and operation of a securities
19 affiliate in the United States by a foreign
20 bank that operates a branch or agency or
21 owns or controls a bank or commercial
22 lending company in the United States, and
23 any company that owns or controls such a
24 foreign bank, giving due regard to the prin-

1 *ciple of national treatment and equality of*
2 *competitive opportunity.*

3 “(B) *ALTERNATIVE CAPITAL TREATMENT*
4 *FOR WELL CAPITALIZED FINANCIAL SERVICES*
5 *HOLDING COMPANIES.*—

6 “(i) *IN GENERAL.*—A financial services
7 *holding company and the depository insti-*
8 *tution subsidiaries of such company shall be*
9 *deemed to have met the capital requirements*
10 *set forth in subparagraph (A) if—*

11 “(I) *the holding company files a*
12 *written notice with the Board of such*
13 *company’s election to meet such capital*
14 *requirements in the manner provided*
15 *in this subparagraph;*

16 “(II) *all depository institutions*
17 *controlled by the financial services*
18 *holding company are at least ade-*
19 *quately capitalized; and*

20 “(III) *the financial services hold-*
21 *ing company is (and immediately after*
22 *the acquisition of a securities affiliate*
23 *would continue to be) well capitalized.*

24 “(ii) *LOSSES INCURRED BY FDIC.*—A
25 *financial services holding company which*

1 *makes an election under clause (i) in con-*
2 *nection with the acquisition of control of*
3 *any securities affiliate shall be liable for*
4 *any loss incurred by the Federal Deposit*
5 *Insurance Corporation, or any loss which*
6 *the Federal Deposit Insurance Corporation*
7 *reasonably anticipates incurring in connec-*
8 *tion with—*

9 *“(I) the default of any insured de-*
10 *pository institution controlled by the*
11 *financial services holding company; or*

12 *“(II) any assistance provided by*
13 *the Corporation to any insured deposi-*
14 *tory institution in danger of default*
15 *that is controlled by the financial serv-*
16 *ices holding company.*

17 *“(C) MANAGERIAL RESOURCES.—*

18 *“(i) IN GENERAL.—The financial serv-*
19 *ices holding company and each depository*
20 *institution subsidiary of such company—*

21 *“(I) are well managed; and*

22 *“(II) were well managed during*
23 *the 12-month period preceding the ac-*
24 *quisition of a securities affiliate (but*
25 *for purposes of this subparagraph the*

1 *Board may disregard any depository*
2 *institution acquired by the financial*
3 *services holding company during that*
4 *period).*

5 “(ii) *SECURITIES ACTIVITIES.*—*The fi-*
6 *nancial services holding company has the*
7 *managerial resources to conduct the pro-*
8 *posed securities activities safely and sound-*
9 *ly.*

10 “(D) *INTERNAL CONTROLS.*—*The financial*
11 *services holding company has established ade-*
12 *quate policies and procedures to manage finan-*
13 *cial and operational risks, to provide reasonable*
14 *assurance of compliance with this section and*
15 *other applicable laws, and to provide reasonable*
16 *assurance of maintenance of corporate separate-*
17 *ness within the financial services holding com-*
18 *pany.*

19 “(E) *NO DETRIMENTAL EFFECT ON FINAN-*
20 *CIAL SERVICES HOLDING COMPANY OR ITS SUB-*
21 *SIDIARY DEPOSITORY INSTITUTIONS.*—*The acqui-*
22 *sition of a securities affiliate would not adversely*
23 *affect the safety and soundness of—*

24 *“(i) the financial services holding com-*
25 *pany; or*

1 “(ii) any depository institution sub-
2 sidiary of the financial services holding
3 company.

4 “(F) CONCENTRATION OF RESOURCES.—The
5 acquisition of a securities affiliate would not re-
6 sult in an undue concentration of resources in
7 the financial services business.

8 “(G) RESPONSIVENESS TO COMMUNITY
9 NEEDS.—The lead insured depository institution
10 subsidiary of the financial services holding com-
11 pany and insured depository institutions con-
12 trolling at least 80 percent of the aggregate total
13 risk-weighted assets of insured depository institu-
14 tions controlled by the financial services holding
15 company have achieved a ‘satisfactory record of
16 meeting community credit needs’, or better, dur-
17 ing the most recent examination of such insured
18 depository institutions.

19 “(3) LIMITED NOTICE PROCEDURES FOR PRO-
20 POSALS BY WELL CAPITALIZED AND WELL MANAGED
21 COMPANIES TO ACQUIRE ADDITIONAL SECURITIES AF-
22 FILIATES.—A financial services holding company
23 may, without providing the notice required under
24 paragraph (1), directly or indirectly acquire the
25 shares or substantially all of the assets of any com-

1 pany that is engaged in activities described in sub-
2 paragraph (A) or (B) of subsection (a)(1), if—

3 “(A) the financial services holding company
4 previously received the Board’s approval under
5 paragraph (1) to control a securities affiliate
6 and continues to control the securities affiliate
7 pursuant to that approval;

8 “(B) the acquisition proposal qualifies
9 under section 4(j)(4);

10 “(C) the financial services holding company
11 provides the written notification required in sec-
12 tion 4(j)(5); and

13 “(D) the acquisition would not result in an
14 undue concentration of resources in the financial
15 services business.

16 “(c) *ADDITIONAL INVESTMENT IN SECURITIES AFFILI-*
17 *ATE.*—

18 “(1) *PRIOR NOTICE REQUIRED.*—A financial
19 services holding company that has acquired control of
20 a securities affiliate under this section shall not, di-
21 rectly or indirectly, make any additional investment
22 in the securities affiliate that is considered capital for
23 purposes of any capital requirement imposed on the
24 securities affiliate under the Securities Exchange Act
25 of 1934 (other than an extension of credit under a re-

1 *volving credit agreement approved by the Board), un-*
2 *less the financial services holding company gives the*
3 *Board prior written notice of the proposed investment*
4 *and the Board—*

5 *“(A) issues a written statement of the*
6 *Board’s intent not to disapprove the notice; or*

7 *“(B) does not disapprove the notice within*
8 *30 days after the notice is filed.*

9 *“(2) NO PRIOR NOTICE REQUIRED FOR CERTAIN*
10 *FINANCIAL SERVICES HOLDING COMPANIES.—*

11 *“(A) IN GENERAL.—A financial services*
12 *holding company shall not be required to provide*
13 *prior notice under paragraph (1) if after making*
14 *any investment described in paragraph (1)—*

15 *“(i) the financial services holding com-*
16 *pany would be adequately capitalized under*
17 *the capital standards applicable, if any, to*
18 *such financial services holding company*
19 *and each of the financial services holding*
20 *company’s subsidiary depository institu-*
21 *tions would be well capitalized; and*

22 *“(ii) the financial services holding*
23 *company and each of its subsidiary deposi-*
24 *tory institutions are well managed (but for*
25 *purposes of this clause the Board may dis-*

1 *regard any depository institution acquired*
2 *by the financial services holding company*
3 *during the previous 12-month period).*

4 “(B) *SUBSEQUENT NOTICE.*—A financial
5 *services holding company that makes an invest-*
6 *ment pursuant to subparagraph (A) shall pro-*
7 *vide written notice to the Board of the additional*
8 *investment within 10 days after making the in-*
9 *vestment.*

10 “(3) *CRITERIA FOR DISAPPROVING NOTICE.*—The
11 *Board may disapprove a notice filed under para-*
12 *graph (1) if—*

13 “(A) *any depository institution affiliate of*
14 *the securities affiliate is undercapitalized; or*

15 “(B) *the Board determines that the finan-*
16 *cial services holding company would be*
17 *undercapitalized under the capital standards ap-*
18 *plicable, if any, to such financial services hold-*
19 *ing company after making the investment or*
20 *that the investment would otherwise be unsafe or*
21 *unsound.*

22 “(4) *EMERGENCY APPROVAL.*—Notwithstanding
23 *any provision of this subsection, in the event of ad-*
24 *verse market conditions, or concerns regarding the fi-*
25 *nancial or operational condition of the securities af-*

1 *affiliate, the Board may approve any additional invest-*
2 *ment in the securities affiliate on an emergency basis*
3 *if such additional investment does not adversely affect*
4 *the safety and soundness of all insured depository in-*
5 *stitution affiliates of such securities affiliate and does*
6 *not diminish the ability of the financial services hold-*
7 *ing company to maintain an appropriate amount of*
8 *capital in all such insured depository institutions.*

9 *“(d) PROVISIONS APPLICABLE IF AFFILIATED DEPOSI-*
10 *TORY INSTITUTION CEASES TO BE WELL CAPITALIZED.—*

11 *“(1) HOLDING COMPANY ACTION REQUIRED IF*
12 *AFFILIATED INSTITUTIONS ARE NOT WELL CAPITAL-*
13 *IZED.—*

14 *“(A) APPLICABILITY.—This paragraph shall*
15 *apply if—*

16 *“(i) the lead depository institution of*
17 *the financial services holding company is*
18 *not well capitalized, or*

19 *“(ii) well capitalized depository insti-*
20 *tutions do not control at least 80 percent of*
21 *the aggregate total risk-weighted assets of*
22 *depository institutions affiliated with the*
23 *securities affiliate.*

24 *“(B) CAPITAL MAINTENANCE AGREE-*
25 *MENT.—Within 30 days after subparagraph (A)*

1 *becomes applicable with respect to any financial*
2 *services holding company, such company shall*
3 *execute an agreement with the Board—*

4 “(i) *to meet the capital requirements of*
5 *subparagraph (A) within a reasonable pe-*
6 *riod of time; or*

7 “(ii) *to divest control of the depository*
8 *institution in an orderly manner within*
9 *180 days, or within such additional period*
10 *of time as the Board may determine is rea-*
11 *sonably required in order to effect such di-*
12 *vestiture.*

13 “(C) *RESTRICTIONS ON CERTAIN SECURI-*
14 *TIES ACTIVITIES.—If a financial services holding*
15 *company fails to meet the requirements of, or*
16 *comply with the agreement executed pursuant to,*
17 *subparagraph (B), a securities affiliate of such*
18 *financial services holding company shall not, be-*
19 *ginning 180 days after subparagraph (A) be-*
20 *comes applicable with respect to such company,*
21 *agree to underwrite or deal in, any securities*
22 *other than—*

23 “(i) *securities expressly authorized by*
24 *section 5136 of the Revised Statutes of the*

1 *United States as permissible for a national*
2 *bank to underwrite or deal in;*

3 “(ii) *securities backed by or represent-*
4 *ing interests in notes, drafts, acceptances,*
5 *loans, leases, receivables, other obligations,*
6 *or pools of any such obligations; or*

7 “(iii) *securities issued by an open-end*
8 *investment company registered under the*
9 *Investment Company Act of 1940.*

10 “(D) *EXCEPTION.—The Board may permit*
11 *the securities affiliate of a financial services*
12 *holding company described in subparagraph (C)*
13 *to underwrite or deal in securities not described*
14 *in clauses (i) through (iii) of such subparagraph*
15 *for a period of 1 year from the date on which*
16 *subparagraph (A) first becomes applicable with*
17 *respect to such company, if—*

18 “(i) *the financial services holding com-*
19 *pany submits a capital restoration plan to*
20 *the Board specifying the steps the financial*
21 *services holding company will take to meet*
22 *the requirements of subsection (b)(2)(A),*
23 *and containing such other information as*
24 *the Board may require; and*

25 “(ii) *the Board approves the plan.*

1 “(E) *EXTENSION OF PERIOD.*—

2 “(i) *IN GENERAL.*—Upon application
3 by a financial services holding company,
4 the Board may extend, for not more than 1
5 year at a time, the period provided in sub-
6 paragraph (C).

7 “(ii) *MAXIMUM EXTENSION.*—No exten-
8 sion under clause (i) of the period provided
9 in subparagraph (C) shall, in the aggregate,
10 exceed 2 years.

11 “(2) *DIVESTITURE OF SECURITIES AFFILIATE.*—

12 “(A) *IN GENERAL.*—A financial services
13 holding company shall divest itself of the securi-
14 ties affiliate if any of the financial services hold-
15 ing company’s subsidiary depository institutions
16 has been undercapitalized for more than 6
17 months.

18 “(B) *EXTENDING TIME.*—The Board may
19 provide additional time, not exceeding 18
20 months, for a divestiture under subparagraph
21 (A) if—

22 “(i) the appropriate Federal banking
23 agency or, in the case of a foreign bank or
24 company that owns or controls a foreign
25 bank, the Board, has approved the

1 *undercapitalized institution's capital res-*
2 *toration plan; and*

3 *“(ii) the Board determines that the se-*
4 *curities affiliate poses no significant risk to*
5 *any affiliated depository institution.*

6 *“(e) SECURITIES AFFILIATE EXCLUDED IN DETER-*
7 *MINING WHETHER FINANCIAL SERVICES HOLDING COM-*
8 *PANY IS ADEQUATELY CAPITALIZED.—*

9 *“(1) IN GENERAL.—In determining whether a fi-*
10 *nancial services holding company is adequately cap-*
11 *italized—*

12 *“(A) the financial services holding compa-*
13 *ny's capital and total assets shall each be re-*
14 *duced by—*

15 *“(i) an amount equal to the amount of*
16 *the financial services holding company's eq-*
17 *uity investment in any securities affiliate;*
18 *and*

19 *“(ii) an amount equal to the amount*
20 *of any extensions of credit by the financial*
21 *services holding company to any securities*
22 *affiliate that are considered capital for pur-*
23 *poses of any capital requirement imposed*
24 *on the securities affiliate under section*

1 15(c)(3) of the Securities Exchange Act of
2 1934; and

3 “(B) the securities affiliate’s assets and li-
4 abilities shall not be consolidated with those of
5 the financial services holding company.

6 “(2) EXCEPTION FOR NONSECURITIES ACTIVI-
7 TIES.—Paragraph (1) shall not apply to the extent
8 that the Board determines by regulation or order
9 that—

10 “(A) an item described in such paragraph
11 relates to activities which are not described in
12 subparagraph (A) or (B) of subsection (a)(1); or

13 “(B) another method of adjusting capital is
14 more appropriate to ensure the safety and sound-
15 ness of depository institutions.

16 “(f) SAFEGUARDS.—Each financial services holding
17 company and each subsidiary of any such company shall
18 comply with all applicable safeguard requirements of sec-
19 tion 11.

20 “(g) ACTIVITIES NOT PERMISSIBLE FOR DEPOSITORY
21 INSTITUTIONS.—

22 “(1) IN GENERAL.—A financial services holding
23 company that acquires control of a securities affiliate
24 shall not, after the end of the 1-year period beginning
25 on the date of such acquisition, permit any depository

1 *institution, or any subsidiary of any depository insti-*
2 *tution, which is controlled by such holding com-*
3 *pany—*

4 *“(A) to engage, directly or indirectly, in the*
5 *United States—*

6 *“(i) in underwriting securities backed*
7 *by or representing interests in notes, drafts,*
8 *acceptances, loans, leases, receivables, other*
9 *obligations, or pools of any such obligations*
10 *originated or purchased by the institution*
11 *or its affiliates, other than—*

12 *“(I) securities backed by or rep-*
13 *resenting an interest in 1—4 family*
14 *residential mortgages originated or*
15 *purchased by the depository institution*
16 *or any affiliate or subsidiary of the in-*
17 *stitution; or*

18 *“(II) securities backed by or rep-*
19 *resenting an interest in consumer re-*
20 *ceivables or consumer leases originated*
21 *or purchased by the depository institu-*
22 *tion or any affiliate or subsidiary of*
23 *the institution; or*

24 *“(ii) in underwriting or dealing in*
25 *any other securities, except securities ex-*

1 *pressly authorized by section 5136 of the*
 2 *Revised Statutes of the United States as*
 3 *permissible for a national bank to under-*
 4 *write or deal in; or*

5 *“(B) to make an equity investment in any*
 6 *securities affiliate.*

7 *“(2) EXCEPTION FOR CERTAIN EDGE ACT AND*
 8 *AGREEMENT CORPORATIONS.—The limitations in*
 9 *paragraph (1)(A) shall not apply with respect to ac-*
 10 *tivities conducted by a subsidiary of a financial serv-*
 11 *ices holding company which is held pursuant to sec-*
 12 *tion 25 or 25A of the Federal Reserve Act or section*
 13 *4(c)(13) of this Act.*

14 *“(3) RULE OF CONSTRUCTION.—No provision of*
 15 *this subsection shall be construed as permitting a se-*
 16 *curities affiliate to accept deposits in contravention of*
 17 *section 21 of the Banking Act of 1933.*

18 *“(h) APPROVAL OF SECURITIES ACTIVITIES UNDER*
 19 *SECTION 4(c)(8) RESTRICTED.—The Board shall deny any*
 20 *notice or application by a financial services holding com-*
 21 *pany under authority of section 4(c)(8) to engage in, or*
 22 *acquire the shares of a company engaged in, underwriting*
 23 *or dealing in securities in the United States, other than*
 24 *securities expressly authorized by section 5136 of the Re-*

1 *vised Statutes of the United States as permissible for a na-*
2 *tional bank to underwrite or deal in.*

3 “(i) *BANKERS’ BANKS.*—

4 “(1) *IN GENERAL.*—For purposes of this section,
5 *each shareholder of or participant in a company that*
6 *controls a depository institution described in section*
7 *5169(b)(1) of the Revised Statutes of the United*
8 *States or in a similar statute of any State, and each*
9 *subsidiary of such a shareholder or participant, shall*
10 *be treated as if such shareholder, participant, or sub-*
11 *subsidiary were a subsidiary of that company.*

12 “(2) *EXCEPTION.*—This subsection shall not
13 *apply with respect to a shareholder or participant in*
14 *a company described in subparagraph (A) (or any*
15 *subsidiary of such shareholder or participant) if the*
16 *shareholder or participant, and the affiliates of any*
17 *such shareholder or participant, do not, in the aggre-*
18 *gate, control more than 5 percent of any class of vot-*
19 *ing shares of such company.*

20 “(j) *SHARES ACQUIRED IN CONNECTION WITH UN-*
21 *DERWRITING AND INVESTMENT BANKING ACTIVITIES.*—

22 “(1) *IN GENERAL.*—Notwithstanding section
23 *4(a), a financial services holding company may di-*
24 *rectly or indirectly acquire or control, whether as*
25 *principal, on behalf of 1 or more entities (including*

1 *entities, other than a depository institution or sub-*
2 *sidary of a depository institution, that the financial*
3 *services holding company controls), or otherwise,*
4 *shares, assets, or ownership interests (including with-*
5 *out limitation debt or equity securities, partnership*
6 *interests, trust certificates, or other instruments rep-*
7 *resenting ownership) of a company or other entity,*
8 *whether or not constituting control of such company*
9 *or entity, engaged in activities not authorized pursu-*
10 *ant to section 4 if—*

11 *“(A) the shares, assets, or ownership inter-*
12 *ests are not acquired or held by a depository in-*
13 *stitution or a subsidiary of a depository institu-*
14 *tion;*

15 *“(B) such shares, assets, or ownership inter-*
16 *ests are acquired and held by a securities affili-*
17 *ate or an affiliate of a securities affiliate as part*
18 *of a bona fide underwriting or investment bank-*
19 *ing activity, which includes investment activities*
20 *engaged in for the purpose of appreciation and*
21 *ultimate resale or other disposition of the invest-*
22 *ment, and such shares, assets, or ownership in-*
23 *terests are held for such a period of time as will*
24 *permit the sale or disposition thereof on a rea-*

1 *sonable basis consistent with the nature of such*
2 *activities; and*

3 *“(C) during the period such shares, assets,*
4 *or ownership interests are held, the financial*
5 *services holding company does not actively man-*
6 *age or operate the company or entity except in-*
7 *sofar as necessary to achieve the objectives of sub-*
8 *paragraph (B).*

9 *“(2) NO EXPANSION OF UNDERWRITING ACTIVI-*
10 *TIES.—No provision of this subsection shall be con-*
11 *strued as authorizing any financial services holding*
12 *company, or any subsidiary of any such company, to*
13 *underwrite or deal in any security.*

14 *“(k) DEFINITIONS.—For purposes of this section and*
15 *sections 11 and 12, the following definitions shall apply:*

16 *“(1) CAPITAL STOCK AND SURPLUS.—The term*
17 *‘capital stock and surplus’ has the same meaning as*
18 *in section 23A of the Federal Reserve Act.*

19 *“(2) COVERED TRANSACTION.—The term ‘covered*
20 *transaction’ has the same meaning as in section 23A*
21 *of the Federal Reserve Act.*

22 *“(3) SECURITY.—*

23 *“(A) IN GENERAL.—The term ‘security’ has*
24 *the meaning given to such term in section*
25 *3(a)(10) of the Securities Exchange Act of 1934.*

1 “(B) *EXCEPTIONS.*—For purposes of this
2 section, other than subsection (a), the term ‘secu-
3 rity’ does not include any of the following:

4 “(i) *A contract of insurance.*

5 “(ii) *A deposit account, savings ac-
6 count, certificate of deposit, or other deposit
7 instrument issued by a depository institu-
8 tion.*

9 “(iii) *A share account issued by a sav-
10 ings association if the account is insured by
11 the Federal Deposit Insurance Corporation.*

12 “(iv) *A banker’s acceptance.*

13 “(v) *A letter of credit issued by a de-
14 pository institution.*

15 “(vi) *A debit account at a depository
16 institution arising from a credit card or
17 similar arrangement.*

18 “(vii) *A loan or loan participation (as
19 determined by the Board).*

20 “(C) *BOARD’S AUTHORITY TO EXEMPT TRA-
21 DITIONAL BANKING PRODUCTS.*—The Board may,
22 by regulation or order and after consultation
23 with and consideration of the views of the Secu-
24 rities and Exchange Commission, exempt a

1 *banking product from the definition of security*
 2 *if the Board determines that—*

3 *“(i) the product is more appropriately*
 4 *regulated as a banking product; and*

5 *“(ii) the exemption is otherwise con-*
 6 *sistent with the purposes of this section.*

7 *“(D) DEFINITION FOR LIMITED PURPOSE.—*
 8 *The fact that a particular instrument is excluded*
 9 *pursuant to subparagraph (B) or (C) from the*
 10 *definition of security for purposes of this section*
 11 *shall not be construed as finding or implying*
 12 *that such instrument is or is not a security for*
 13 *purposes of Federal securities laws.”.*

14 *(b) TRANSITION RULE FOR SECURITIES AFFILIATES*
 15 *APPROVED UNDER SECTION 4(c)(8).—*

16 *(1) CONVERSION TO (4)(c)(15) SUBSIDIARY.—*

17 *(A) IN GENERAL.—Except as provided in*
 18 *subparagraph (B) and paragraphs (3) and (4),*
 19 *effective 18 months after the date of enactment of*
 20 *this Act, no financial services holding company*
 21 *may engage in, or retain the shares of any com-*
 22 *pany engaged in, underwriting or dealing in se-*
 23 *curities based on the approval of an application*
 24 *under section 4(c)(8) of the Bank Holding Com-*
 25 *pany Act of 1956 (as in effect before the date of*

1 *the enactment of the Financial Services Competi-*
2 *tiveness Act of 1995) unless the financial services*
3 *holding company has obtained the Board's ap-*
4 *proval to retain the shares of that company*
5 *under section 10.*

6 *(B) EXCEPTION FOR BANK ELIGIBLE SECURITIES.—Subparagraph (A) shall not apply with*
7 *respect to underwriting or dealing in securities*
8 *expressly authorized by section 5136 of the Re-*
9 *vised Statutes of the United States as permissible*
10 *for a national bank to underwrite or deal in.*

12 *(2) EXTENDING TIME.—*

13 *(A) IN GENERAL.—The Board may, for*
14 *good cause shown, extend the time provided*
15 *under paragraph (1) for not more than 18*
16 *months.*

17 *(B) PENDING NOTICES.—If a financial serv-*
18 *ices holding company has filed a notice under*
19 *section 10(b) of the Bank Holding Company Act*
20 *of 1956 not later than 180 days after the date*
21 *of enactment of this Act, paragraph (1) shall not*
22 *apply with respect to the company engaged in*
23 *such underwriting or dealing until 180 days*
24 *after the Board has acted on the notice.*

1 (3) *CONVERSION PROCEDURES FOR COMPANIES*
2 *PREVIOUSLY AUTHORIZED TO CONDUCT SECURITIES*
3 *ACTIVITIES.*—Any financial services holding company
4 that controls a company engaged in underwriting
5 and dealing in corporate debt and equity securities
6 pursuant to an order issued by the Board under sec-
7 tion 4(c)(8) of the Bank Holding Company Act of
8 1956 before the date of enactment of the Financial
9 Services Competitiveness Act of 1995 shall be treated
10 as follows:

11 (A) *REVENUE TEST AND CERTAIN OTHER*
12 *RESTRICTIONS.*—Upon filing the notice required
13 under section 10(b) of the Financial Services
14 Holding Company Act of 1995, the financial
15 services holding company shall be relieved
16 from—

17 (i) the limitation contained in such
18 order on the amount of revenue that may be
19 derived from securities underwriting and
20 dealing activities; and

21 (ii) any other restriction contained in
22 such order that would not be required under
23 section 11 of such Act, as permitted by the
24 Board.

1 (B) *EXAMINATION OF INTERNAL CON-*
2 *TROLS.—The financial services holding company*
3 *shall not, in connection with action on the notice*
4 *submitted under section 10(b)(1) of the Finan-*
5 *cial Services Holding Company Act of 1995, be*
6 *subject to an examination of internal controls*
7 *under section 10(b)(2)(D) of such Act.*

8 (4) *RETENTION OF COMPANIES CONDUCTING LIM-*
9 *ITED SECURITIES ACTIVITIES.—Notwithstanding*
10 *paragraph (1), any financial services holding com-*
11 *pany that controls a company engaged in underwrit-*
12 *ing and dealing in securities (other than corporate*
13 *debt or equity securities) pursuant to an order issued*
14 *by the Board under section 4(c)(8) of the Bank Hold-*
15 *ing Company Act of 1956 before the date of enactment*
16 *of the Financial Services Competitiveness Act of 1995*
17 *may retain control of such company, so long as such*
18 *company complies with all of the limitations, restric-*
19 *tions and conditions, including the limitation on the*
20 *revenue that may be derived from such underwriting*
21 *or dealing activities, contained in such order.*

1 **SEC. 104. SAFEGUARDS RELATING TO SECURITIES AFFILI-**
2 **ATES.**

3 (a) *IN GENERAL.*—The Bank Holding Company Act
4 of 1956 (12 U.S.C. 1841 et seq.) is amended—

5 (1) by redesignating sections 11 and 12 as sec-
6 tions 13 and 14, respectively; and

7 (2) by inserting after section 10 (as added by
8 section 103 of this Act) the following new section:

9 **“SEC. 11. SAFEGUARDS RELATING TO SECURITIES AFFILI-**
10 **ATES.**

11 “(a) *EXTENSIONS OF CREDIT AND ASSET PURCHASES*
12 *RESTRICTED.*—

13 “(1) *IN GENERAL.*—No depository institution af-
14 filiated with a securities affiliate shall, directly or in-
15 directly, do any of the following:

16 “(A) *Extend credit in any manner to the*
17 *securities affiliate.*

18 “(B) *Issue a guarantee, acceptance, or letter*
19 *of credit, including an endorsement or a standby*
20 *letter of credit, for the benefit of the securities af-*
21 *filiate.*

22 “(C) *Except as provided in paragraph (3),*
23 *purchase for its own account, or for the account*
24 *of any subsidiary of such institution, financial*
25 *assets of the securities affiliate.*

1 “(2) *EXCEPTION FOR CLEARING SECURITIES.*—
2 *Paragraph (1)(A) shall not apply with respect to an*
3 *extension of credit by a well capitalized depository in-*
4 *stitution to acquire or sell securities if the following*
5 *conditions are met:*

6 “(A) *The extension of credit is incidental to*
7 *clearing transactions in those securities through*
8 *that depository institution.*

9 “(B) *Both the principal of and the interest*
10 *on the extension of credit are fully secured by*
11 *those securities.*

12 “(C) *Either—*

13 “(i) *the extension of credit is to be re-*
14 *paid before the close of business on the same*
15 *business day; or*

16 “(ii) *all of the following conditions are*
17 *satisfied:*

18 “(I) *The securities cannot, in the*
19 *ordinary course of business, be cleared*
20 *on that business day.*

21 “(II) *The extension of credit is to*
22 *be repaid before the close of business on*
23 *the next business day.*

1 “(III) *Extensions of credit subject*
2 *to this clause, when aggregated with all*
3 *other covered transactions between the*
4 *institution and all affiliated securities*
5 *affiliates do not exceed 10 percent of*
6 *the institution’s capital stock and sur-*
7 *plus.*

8 “(D) *Either—*

9 “(i) *the securities are securities ex-*
10 *pressly authorized by section 5136 of the*
11 *Revised Statutes of the United States as*
12 *permissible for a national bank to under-*
13 *write or deal in; or*

14 “(ii) *the Board permits transactions*
15 *under this paragraph in securities not de-*
16 *scribed in clause (i) and the securities affil-*
17 *iate provides the depository institution with*
18 *such additional security or other assurance*
19 *of performance, if any, as the Board shall*
20 *require to prevent such transactions from*
21 *posing any appreciable risk to the institu-*
22 *tion.*

23 “(3) *EXCEPTIONS FOR CERTAIN SECURITIES*
24 *PURCHASED FOR A DEPOSITORY INSTITUTION’S OWN*
25 *ACCOUNT.—Paragraph (1)(C) shall not apply with*

1 *respect to purchases at the current market value*
2 *(based on reliable and regularly available price*
3 *quotations) of—*

4 *“(A) securities expressly authorized by sec-*
5 *tion 5136 of the Revised Statutes of the United*
6 *States as permissible for a national bank to un-*
7 *derwrite or deal in; or*

8 *“(B) securities that—*

9 *“(i) the securities affiliate has been*
10 *marking to market daily; and*

11 *“(ii) are rated investment grade by at*
12 *least 1 nationally recognized statistical rat-*
13 *ing organization.*

14 *“(4) OTHER EXCEPTIONS.—The Board may*
15 *make exceptions to paragraph (1) for well capitalized*
16 *depository institutions if—*

17 *“(A) the transaction is fully secured in ac-*
18 *cordance with section 23A(c) of the Federal Re-*
19 *serve Act; and*

20 *“(B) the aggregate amount of covered trans-*
21 *actions between the institution and all securities*
22 *affiliates of the financial services holding com-*
23 *pany, excluding transactions permitted under*
24 *paragraph (2)(C)(i) or (3)(A), does not exceed 10*

1 *percent of the institution's capital stock and sur-*
 2 *plus.*

3 “(b) *CREDIT ENHANCEMENT RESTRICTED.*—

4 “(1) *IN GENERAL.*—No depository institution af-
 5 *filiated with a securities affiliate shall, directly or in-*
 6 *directly, extend credit, or issue or enter into a stand-*
 7 *by letter of credit, asset purchase agreement, indem-*
 8 *nity, guarantee, insurance, or other facility, for the*
 9 *purpose of enhancing the marketability of a securities*
 10 *issue underwritten by the securities affiliate.*

11 “(2) *DEFINITION OF TERM BY BOARD.*—The
 12 *Board shall prescribe a definition for the term ‘for the*
 13 *purpose of enhancing the marketability of a securities*
 14 *issue’ for purposes of paragraph (1).*

15 “(3) *EXCEPTION FOR BANK ELIGIBLE SECURI-*
 16 *TIES.*—Paragraph (1) shall not apply with regard to
 17 *securities expressly authorized by section 5136 of the*
 18 *Revised Statutes of the United States as permissible*
 19 *for a national bank to underwrite or deal in.*

20 “(4) *APPLICATION TO WELL CAPITALIZED DE-*
 21 *POSITORY INSTITUTIONS.*—

22 “(A) *IN GENERAL.*—A well capitalized de-
 23 *pository institution may engage in a transaction*
 24 *described in paragraph (1) if—*

1 “(i) the depository institution has
2 adopted appropriate limits on exposure on
3 a consolidated basis to any single customer
4 whose securities are underwritten by the se-
5 curities affiliate; and

6 “(ii) the institution and its securities
7 affiliate have adopted appropriate proce-
8 dures, including maintenance of necessary
9 documentary records, to assure that any
10 such extension of credit, standby letter of
11 credit, asset purchase agreement, indemnity,
12 guarantee, insurance or other facility, is on
13 an arm’s length basis.

14 “(B) ARM’S LENGTH TRANSACTION DE-
15 SCRIBED.—An extension of credit may be consid-
16 ered to be on an arm’s length basis if the terms
17 and conditions are substantially the same as
18 those prevailing at the time for comparable
19 transactions involving securities that are not un-
20 derwritten by the securities affiliate.

21 “(C) COMPLIANCE WITH PARAGRAPH (1).—
22 The Board may require, by regulation or order,
23 compliance with paragraph (1) by well capital-
24 ized depository institutions exempt under this

1 *paragraph in order to achieve any purpose spec-*
 2 *ified in subsection (l).*

3 “(c) *PROHIBITION ON FINANCING PURCHASE OF SECUR-*
 4 *ITY BEING UNDERWRITTEN.—*

5 “(1) *IN GENERAL.—No financial services holding*
 6 *company or subsidiary of a financial services holding*
 7 *company (other than a securities affiliate) shall*
 8 *knowingly extend or arrange for the extension of cred-*
 9 *it, directly or indirectly, secured by or for the purpose*
 10 *of purchasing any security while, or for 30 days after,*
 11 *that security is the subject of a distribution in which*
 12 *a securities affiliate of that financial services holding*
 13 *company participates as an underwriter or a member*
 14 *of a selling group.*

15 “(2) *RELIANCE ON ACKNOWLEDGEMENT.—For*
 16 *purposes of paragraph (1), a financial services hold-*
 17 *ing company or subsidiary may rely on an express*
 18 *written acknowledgement signed by the borrower that*
 19 *the credit is not secured by or for the purpose of pur-*
 20 *chasing a security described in this subparagraph.*

21 “(3) *APPLICATION TO BANK ELIGIBLE SECURI-*
 22 *TIES.—Paragraph (1) shall not apply with regard to*
 23 *extensions of credit if the securities are securities ex-*
 24 *pressly authorized by section 5136 of the Revised*

1 *Statutes of the United States as permissible for a na-*
2 *tional bank to underwrite or deal in.*

3 “(4) *APPLICATION TO WELL CAPITALIZED DE-*
4 *POSITORY INSTITUTIONS.—The Board may make ex-*
5 *ceptions, by regulation or order, to paragraph (1) for*
6 *an extension of credit, after consultation with and*
7 *considering the views of the Securities and Exchange*
8 *Commission, if—*

9 “(A) *the financial services holding company*
10 *is adequately capitalized;*

11 “(B) *the financial services holding compa-*
12 *ny’s lead depository institution is well capital-*
13 *ized;*

14 “(C) *well capitalized depository institutions*
15 *control at least 80 percent of the assets of deposi-*
16 *tory institutions controlled by the financial serv-*
17 *ices holding company; and*

18 “(D) *all depository institutions controlled*
19 *by the financial services holding company are*
20 *well capitalized or adequately capitalized.*

21 “(5) *CONSISTENCY WITH THE FEDERAL SECURI-*
22 *TIES LAWS.—No provision of this subsection shall be*
23 *construed as permitting a securities affiliate to extend*
24 *or maintain credit, or arrange for an extension of*
25 *credit, except in compliance with applicable provi-*

1 *sions of the Securities Exchange Act of 1934 and the*
2 *regulations prescribed and interpretations issued*
3 *under such Act.*

4 “(d) *RESTRICTION ON EXTENDING CREDIT TO MAKE*
5 *PAYMENTS ON SECURITIES.—*

6 “(1) *IN GENERAL.—No depository institution af-*
7 *iliated with a securities affiliate shall, directly or in-*
8 *directly, extend credit to an issuer of securities under-*
9 *written by the securities affiliate for the purpose of*
10 *paying the principal of those securities or interest or*
11 *dividends on those securities.*

12 “(2) *EXCEPTIONS FOR CERTAIN EXTENSIONS OF*
13 *CREDIT.—Paragraph (1) shall not apply to an exten-*
14 *sion of credit for a documented purpose (other than*
15 *paying principal, interest, or dividends) if the tim-*
16 *ing, maturity, and other terms of the credit, taken as*
17 *a whole, are substantially different from those of the*
18 *underwritten securities.*

19 “(3) *EXCEPTIONS FOR BANK ELIGIBLE SECURI-*
20 *TIES.—Paragraph (1) shall not apply with respect to*
21 *any security expressly authorized by section 5136 of*
22 *the Revised Statutes of the United States as permis-*
23 *sible for a national bank to underwrite or deal in.*

24 “(4) *APPLICATION TO WELL CAPITALIZED DE-*
25 *POSITORY INSTITUTIONS.—*

1 “(A) *IN GENERAL.*—Paragraph (1) shall
2 *not apply with respect to well capitalized deposi-*
3 *tory institutions if—*

4 “(i) *the depository institution has*
5 *adopted appropriate limits on exposure on*
6 *a consolidated basis to any single customer*
7 *whose securities are underwritten by the se-*
8 *curities affiliate; and*

9 “(ii) *the depository institution has*
10 *adopted appropriate procedures, including*
11 *maintenance of necessary documentary*
12 *records, to assure that any extension of*
13 *credit by the depository institution to an is-*
14 *suer for the purpose of paying the prin-*
15 *cipal, interest or dividends on securities un-*
16 *derwritten by the securities affiliate is on*
17 *an arm’s length basis.*

18 “(B) *ARM’S LENGTH TRANSACTION DE-*
19 *SCRIBED.*—*An extension of credit may be consid-*
20 *ered to have been made on an arm’s length basis*
21 *if the terms and conditions are substantially the*
22 *same as those prevailing at the time for com-*
23 *parable transactions with issuers whose securi-*
24 *ties are not underwritten by the securities affili-*
25 *ate.*

1 “(C) *COMPLIANCE WITH SUBPARAGRAPH*
2 *(A).*—The Board may require, by regulation or
3 order, compliance with paragraph (1) by well
4 capitalized depository institutions exempt under
5 this paragraph in order to achieve any purpose
6 specified in subsection (l).

7 “(e) *COMMON DIRECTORS AND SENIOR EXECUTIVE*
8 *OFFICERS.*—

9 “(1) *IN GENERAL.*—The Board shall, by regula-
10 tion or order, prescribe the circumstances under
11 which directors and senior executive officers of a secu-
12 rities affiliate may serve at the same time as directors
13 or senior executive officers of any affiliated depository
14 institutions.

15 “(2) *STANDARDS.*—The Board, in issuing any
16 regulation or order pursuant to paragraph (1), shall
17 consider appropriate factors including—

18 “(A) any burdens imposed by restrictions
19 on director and senior executive officer inter-
20 locks;

21 “(B) the safety and soundness of depository
22 institutions and securities affiliates;

23 “(C) unfair competition in securities activi-
24 ties;

1 “(D) *improper exchange of customer infor-*
2 *mation; or*

3 “(E) *harm to customers of securities affili-*
4 *ates or depository institutions that could reason-*
5 *ably result from director and senior officer inter-*
6 *locks.*

7 “(3) *EXCEPTION FOR SMALL FINANCIAL SERV-*
8 *ICES HOLDING COMPANIES.—*

9 “(A) *IN GENERAL.—Notwithstanding para-*
10 *graph (1), a director or senior executive officer*
11 *of a securities affiliate may serve at the same*
12 *time as a director or senior executive officer of*
13 *an affiliated depository institution if that insti-*
14 *tution and all affiliated depository institutions*
15 *have, in the aggregate, total assets of not more*
16 *than \$500,000,000.*

17 “(B) *INFLATION ADJUSTMENT.—The dollar*
18 *limitation contained in subparagraph (A) shall*
19 *be adjusted annually after December 31, 1995,*
20 *by the annual percentage increase in the*
21 *Consumer Price Index for Urban Wage Earners*
22 *and Clerical Workers published by the Bureau of*
23 *Labor Statistics.*

24 “(4) *EXCEPTION FOR CERTAIN REGULATION K*
25 *AFFILIATES.—Paragraph (1) shall not prohibit a di-*

1 *rector or senior executive officer of a securities affili-*
2 *ate from serving at the same time as a director or*
3 *senior executive officer of a depository institution*
4 *which—*

5 *“(A) is organized under section 25 or 25A*
6 *of the Federal Reserve Act;*

7 *“(B) is an affiliate of such securities affili-*
8 *ate; and*

9 *“(C) principally engages in business outside*
10 *the United States.*

11 *“(f) DISCLOSURE REQUIRED BY SECURITIES AFFILI-*
12 *ATE.—*

13 *“(1) IN GENERAL.—At the time a securities ac-*
14 *count is opened, a securities affiliate shall conspicu-*
15 *ously disclose in writing to each of its customers*
16 *that—*

17 *“(A) securities sold, offered, or recommended*
18 *by the securities affiliate—*

19 *“(i) are not deposits;*

20 *“(ii) are not insured by the Federal*
21 *Deposit Insurance Corporation;*

22 *“(iii) are not guaranteed by an affili-*
23 *ated insured depository institution;*

1 “(iv) are not otherwise an obligation of
2 an insured depository institution (unless
3 such is the case); and

4 “(v) with regard to any product that
5 includes any investment component, are
6 subject to investment risks including pos-
7 sible loss of principal invested;

8 “(B) the securities affiliate is not an in-
9 sured depository institution, and is a corpora-
10 tion separate from any insured depository insti-
11 tution; and

12 “(C) the securities affiliate may be under-
13 writing or dealing in the securities being sold,
14 offered or recommended, and if so, would have a
15 financial interest in the transaction.

16 “(2) FORM OF DISCLOSURE.—The disclosures re-
17 quired by paragraph (1) shall be made in clear and
18 concise language that—

19 “(A) is readily comprehensible to customers
20 of the securities affiliate, and

21 “(B) is designed to promote customer un-
22 derstanding that uninsured investment products
23 are not deposits insured by the Federal Deposit
24 Insurance Corporation.

1 “(3) *BOARD AUTHORITY.*—Subject to paragraph
2 (2), the Board may, in the Board’s discretion, pre-
3 scribe disclosures in addition to the disclosures pre-
4 scribed by paragraph (1).

5 “(g) *DISCLOSURE REQUIRED BY INSURED DEPOSI-*
6 *TORY INSTITUTIONS.*—

7 “(1) *IN GENERAL.*—No insured depository insti-
8 tution shall knowingly express any opinion on the
9 value of, or the advisability of purchasing or selling,
10 nonbanking products (as defined by the Board) sold
11 by the insured depository institution or any affiliate
12 of an insured depository institution unless the in-
13 sured depository institution conspicuously discloses in
14 writing to the customer that—

15 “(A) the insured depository institution or
16 affiliate (whichever is applicable) is selling the
17 nonbanking product and has a financial interest
18 in the transaction (if such is the case);

19 “(B) the nonbanking products—

20 “(i) are not deposits;

21 “(ii) are not insured by the Federal
22 Deposit Insurance Corporation;

23 “(iii) are not guaranteed by the insti-
24 tution or any other affiliated insured depos-
25 itory institution;

1 “(iv) are not otherwise an obligation of
2 an insured depository institution (unless
3 such is the case); and

4 “(v) with regard to any nonbanking
5 product that includes any investment com-
6 ponent, are subject to investment risks in-
7 cluding possible loss of principal invested;
8 and

9 “(C) an affiliate, if involved, is not an in-
10 sured depository institution (unless such is the
11 case), and is a corporation separate from any
12 insured depository institution (unless such is not
13 the case).

14 “(2) *FORM OF DISCLOSURE.*—The disclosures re-
15 quired by paragraph (1) shall be made in clear and
16 concise language that—

17 “(A) is readily comprehensible to customers
18 of the insured depository institution, and

19 “(B) is designed to promote customer un-
20 derstanding that nonbanking products are not
21 deposits insured by the Federal Deposit Insur-
22 ance Corporation.

23 “(3) *CUSTOMER ACKNOWLEDGEMENT OF DISCLO-*
24 *SURE.*—

1 “(A) *IN GENERAL.*—Whenever any insured
2 depository institution or securities affiliate opens
3 an account for the purpose of selling a
4 nondeposit investment product or products to a
5 customer, such insured depository institution or
6 securities affiliate as the case may be, shall ob-
7 tain a 1-time acknowledgment of receipt by the
8 customer of such disclosures, including the date
9 of receipt with the customer’s name, address, and
10 the account number.

11 “(B) *SPECIAL RULE FOR ACCREDITED IN-*
12 *VESTORS.*—In the case of any customer who is,
13 or meets the requirements for, an accredited in-
14 vestor (as defined in section 2(15) of the Securi-
15 ties Act of 1933), the acknowledgment of the re-
16 ceipt of any disclosure described in subpara-
17 graph (A) may be obtained by the insured depos-
18 itory institution or securities affiliate at the
19 time any account is opened by such customer.

20 “(4) *BOARD AUTHORITY.*—Subject to paragraph
21 (2), the Board, after consultation with the other ap-
22 propriate Federal banking agencies, may prescribe
23 disclosures in addition to the disclosures required by
24 paragraph (1).

1 “(h) *IMPROPER DISCLOSURE OF CONFIDENTIAL CUS-*
2 *TOMER INFORMATION PROHIBITED.*—

3 “(1) *IN GENERAL.*—No depository institution
4 *subsidiary of a financial services holding company*
5 *shall disclose to any affiliate of such institution which*
6 *is not a depository institution, and no affiliate of*
7 *such company which is not a depository institution*
8 *shall disclose to any other affiliate which is a deposi-*
9 *tory institution or a subsidiary of such an institu-*
10 *tion, any nonpublic customer information (including*
11 *an evaluation of the creditworthiness of an issuer or*
12 *other customer of that institution or securities affili-*
13 *ate), unless it is clearly and conspicuously disclosed*
14 *that such information may be communicated among*
15 *such persons and the customer is given the oppor-*
16 *tunity, before the time that the information is ini-*
17 *tially communicated, to direct that such information*
18 *not be communicated among such persons.*

19 “(2) *DEFINITION.*—For purposes of paragraph
20 (1), the term ‘nonpublic customer information’ does
21 not include—

22 “(A) *customers’ names and addresses (un-*
23 *less a customer has specified otherwise);*

1 “(B) information that could be obtained
2 from unaffiliated credit bureaus or similar com-
3 panies in the ordinary course of business; or

4 “(C) information that is customarily pro-
5 vided to unaffiliated credit bureaus or similar
6 companies in the ordinary course of business
7 by—

8 “(i) depository institutions not affili-
9 ated with securities affiliates; or

10 “(ii) brokers and dealers not affiliated
11 with depository institutions.

12 “(i) UNDERWRITING SECURITIES REPRESENTING OB-
13 LIGATIONS ORIGINATED BY AFFILIATE RESTRICTED.—A se-
14 curities affiliate shall not underwrite securities secured by
15 or representing an interest in mortgages or other obligations
16 originated or purchased by an affiliated depository institu-
17 tion or subsidiary of such an institution—

18 “(1) unless those securities—

19 “(A) are rated by at least 1 unaffiliated,
20 nationally recognized statistical rating organiza-
21 tion;

22 “(B) are issued or guaranteed by the Fed-
23 eral Home Loan Mortgage Corporation, the Fed-
24 eral National Mortgage Association, or the Gov-
25 ernment National Mortgage Association; or

1 “(C) represent interests in securities de-
2 scribed in subparagraph (B); or

3 “(2) except as permitted by the Board.

4 “(j) *RECIPROCAL ARRANGEMENTS PROHIBITED.*—No
5 financial services holding company and no subsidiary of
6 a financial services holding company may enter into any
7 agreement, understanding, or other arrangement under
8 which—

9 “(1) 1 financial services holding company (or
10 subsidiary of that financial services holding com-
11 pany) agrees to engage in a transaction with, or on
12 behalf of, another financial services holding company
13 (or subsidiary of that financial services holding com-
14 pany), in exchange for

15 “(2) the agreement of the second financial serv-
16 ices holding company referred to in paragraph (1) (or
17 a subsidiary of that financial services holding com-
18 pany) to engage in any transaction with, or on behalf
19 of, the first financial services holding company re-
20 ferred to in such paragraph (or any subsidiary of
21 that financial services holding company), for the pur-
22 pose of evading any requirement or restriction of Fed-
23 eral law on transactions between, or for the benefit of,
24 affiliates of financial services holding companies.

1 “(k) *SAFEGUARDS APPLY TO CERTAIN SUBSIDI-*
2 *ARIES.—Except as provided in this section—*

3 “(1) *SECURITIES AFFILIATE.—No subsidiary of*
4 *a securities affiliate may do anything that this sec-*
5 *tion prohibits the securities affiliate from doing.*

6 “(2) *DEPOSITORY INSTITUTION.—No subsidiary*
7 *of a depository institution may do anything that this*
8 *subsection prohibits the institution from doing.*

9 “(l) *AUTHORITY TO MODIFY AND IMPOSE ADDITIONAL*
10 *SAFEGUARDS; INTERPRETIVE AUTHORITY.—*

11 “(1) *IN GENERAL.—The Board may, by regula-*
12 *tion or order—*

13 “(A) *adopt additional limitations, restric-*
14 *tions or conditions on relationships or trans-*
15 *actions among depository institutions, their af-*
16 *filiates, and their customers; and*

17 “(B) *make any modification to any limita-*
18 *tion, restriction, or condition imposed under this*
19 *section on relationships or transactions among*
20 *depository institutions, the affiliates of insured*
21 *depository institutions, and the customers of*
22 *such institutions or affiliates, including modi-*
23 *fications in addition to those expressly provided*
24 *for in this section.*

1 “(2) *STANDARDS.*—*The Board may not exercise*
2 *authority under paragraph (1) unless the Board finds*
3 *that such action is consistent with the purposes of this*
4 *Act, including—*

5 “(A) *the avoidance of any significant risk*
6 *to the safety and soundness of depository institu-*
7 *tions or the Federal deposit insurance funds;*

8 “(B) *the enhancement of the financial sta-*
9 *bility of financial services holding companies;*

10 “(C) *the prevention of the subsidization of*
11 *securities affiliates by depository institutions;*

12 “(D) *the avoidance of conflicts of interest or*
13 *other abuses; and*

14 “(E) *the application of the principle of na-*
15 *tional treatment and equality of competitive op-*
16 *portunity between securities affiliates owned or*
17 *controlled by domestic financial services holding*
18 *companies and securities affiliates owned or con-*
19 *trolled by foreign banks operating in the United*
20 *States.*

21 “(3) *BIENNIAL REVIEW.*—*Beginning 2 years*
22 *after the date of enactment of the Financial Services*
23 *Competitiveness Act of 1995, the Board shall, on a bi-*
24 *ennial basis—*

1 “(A) review all restrictions established pur-
2 suant to paragraph (1) to determine whether
3 any such restrictions are required any longer to
4 carry out the purposes of this Act; and

5 “(B) modify or eliminate any such restric-
6 tion that the Board determines is no longer re-
7 quired to carry out the purposes of this Act.

8 “(m) COMPLIANCE PROGRAMS REQUIRED.—

9 “(1) IN GENERAL.—Each appropriate Federal
10 banking and agency the Securities and Exchange
11 Commission shall establish a program for—

12 “(A) sharing information concerning com-
13 pliance with subtitle A of title I or subtitle A or
14 B of title II of the Financial Services Competi-
15 tiveness Act of 1995, and the amendments made
16 by such subtitles, by—

17 “(i) brokers, dealers, investment advis-
18 ers, or investment companies that are reg-
19 istered with the Securities and Exchange
20 Commission that are affiliated with deposi-
21 tory institutions, or are separately identifi-
22 able departments or divisions of depository
23 institutions registered as brokers, dealers, or
24 investment advisers; and

1 “(ii) depository institutions and their
2 affiliates;

3 “(B) enforcing compliance with subtitle A
4 of title I of the Financial Services Competitive-
5 ness Act of 1995, and the amendments made by
6 such subtitle and paragraphs (4) and (5) of sec-
7 tion 3(a) of the Securities Exchange Act of 1934
8 by entities under its supervision; and

9 “(C) responding to any complaints from
10 customers about inappropriate cross-marketing
11 of securities products or inadequate disclosure.

12 “(2) DATA COLLECTION.—

13 “(A) IN GENERAL.—The appropriate Fed-
14 eral banking agencies, after consultation with
15 and consideration of the views of the Securities
16 and Exchange Commission, may require any de-
17 pository institution that has effected securities
18 transactions pursuant to any exception enumer-
19 ated in paragraphs (4) and (5) of section 3(a)
20 of the Securities Exchange Act of 1934 to iden-
21 tify the exceptions relied upon and to submit
22 such information necessary to monitor compli-
23 ance under such paragraphs.

24 “(B) COMMISSION ACCESS.—The appro-
25 priate Federal banking agency shall make any

1 *information referred to in subparagraph (A)*
2 *available to the Securities and Exchange Com-*
3 *mission, upon the request of the Commission.*

4 *“(C) COMPLIANCE.—In implementing the*
5 *provisions of this paragraph, the appropriate*
6 *Federal banking agencies shall ensure that any*
7 *information requests to depository institutions*
8 *take into account the size and activities of the*
9 *institutions and do not cause undue reporting*
10 *burdens.*

11 *“(3) COMMISSION’S ENFORCEMENT AUTHOR-*
12 *ITY.—Without limiting in any way the authority of*
13 *the appropriate Federal banking agencies under this*
14 *section, the Securities and Exchange Commission*
15 *shall have the authority to enforce any subsection of*
16 *this section against a securities affiliate as if such*
17 *subsection were a provision of the Securities Ex-*
18 *change Act of 1934 to the extent that the subsection*
19 *applies with respect to the conduct or activities of the*
20 *securities affiliate.*

21 *“(4) EXAMINATION REPORTS.—The appropriate*
22 *Federal banking agencies shall, to the extent prac-*
23 *ticable, use the reports of examination of any broker,*
24 *dealer, investment adviser, or investment company*
25 *made by or on behalf of the Securities and Exchange*

1 *Commission and reports made by or on behalf of a*
2 *registered securities association or national securities*
3 *exchange, and shall defer to such examinations for*
4 *compliance with the Federal securities laws.*

5 “(5) *INTERPRETATIONS OF THE FEDERAL SECURITIES LAWS.—The appropriate Federal banking*
6 *agencies shall defer to the Securities and Exchange*
7 *Commission regarding all interpretations and en-*
8 *forcement of the Federal securities laws relating to the*
9 *application of the Federal securities laws to the ac-*
10 *tivities and conduct of brokers, dealers, investment*
11 *advisers, and investment companies.*

12 “(6) *NOTICE OF CERTAIN ACTIONS BY SEC.—The*
13 *Securities and Exchange Commission shall give notice*
14 *to the appropriate Federal banking agency upon the*
15 *commencement of any disciplinary or law enforce-*
16 *ment proceedings by the Commission and a copy of*
17 *any order entered by the Commission against—*

18 “(A) *any broker, dealer, or investment ad-*
19 *viser that—*

20 “(i) *is registered with the Securities*
21 *and Exchange Commission; and*

22 “(ii) *is affiliated with, or is a sepa-*
23 *rately identifiable department or division*
24 *of, a depository institution;*
25

1 “(B) any investment company registered
2 with the Securities and Exchange Commission
3 that is an affiliate of or is advised by an invest-
4 ment adviser affiliated with a depository institu-
5 tion or by a separately identifiable department
6 or division of a depository institution that is a
7 registered investment adviser; or

8 “(C) any financial services holding com-
9 pany, depository institution, or subsidiary of
10 such company or institution, if the proposed ac-
11 tion relates to subtitle A of title I or subtitle A
12 or B of title II of the Financial Services Com-
13 petitiveness Act of 1995.

14 “(7) NOTICE OF CERTAIN ACTIONS BY APPRO-
15 PRIATE FEDERAL BANKING AGENCIES.—Upon the
16 commencement of any disciplinary or law enforce-
17 ment proceedings to enforce the provisions of subtitle
18 A of title I of the Financial Services Competitiveness
19 Act of 1995, or any amendment made by such sub-
20 title, by an appropriate Federal banking agency
21 against any broker, dealer, investment adviser, or in-
22 vestment company that is registered under the Fed-
23 eral securities laws and is affiliated with a depository
24 institution or is a separately identifiable department
25 or division of a depository institution, the appro-

1 *priate Federal banking agency shall give notice to the*
2 *Securities and Exchange Commission of the proposed*
3 *action.*

4 “(8) *IMMEDIATE ACTION ALLOWED BEFORE NO-*
5 *TICE.—The notice required under paragraph (6) or*
6 *(7) may be provided promptly after action by the Se-*
7 *curities and Exchange Commission or the appropriate*
8 *Federal banking agency, if—*

9 “(A) *the Commission determines that the*
10 *protection of investors requires immediate action*
11 *by the Commission and prior notice under para-*
12 *graph (6) is not practical under the cir-*
13 *cumstances; or*

14 “(B) *the appropriate Federal banking agen-*
15 *cy determines that concerns for the safety and*
16 *soundness of a depository institution or its affili-*
17 *ate require immediate action by the agency and*
18 *prior notice under paragraph (7) is not prac-*
19 *tical under the circumstances.*

20 “(9) *COORDINATED ENFORCEMENT ACTIONS.—*
21 *The Securities and Exchange Commission and the ap-*
22 *propriate Federal banking agencies shall, to the extent*
23 *practicable, coordinate supervisory actions based on*
24 *applicable law where the actions are based on the*
25 *same or related events or practices.*

1 “(10) *INVESTMENT COMPANIES NOT AFFILIATED*
2 *WITH A DEPOSITORY INSTITUTION.*—*The appropriate*
3 *Federal banking agency shall not have authority*
4 *under this Act or any other provision of law to in-*
5 *spect or examine any investment company registered*
6 *under the Federal securities laws that is not—*

7 “(A) *affiliated with a depository institu-*
8 *tion; or*

9 “(B) *advised by an investment adviser af-*
10 *filiated with a depository institution or by a*
11 *separately identifiable department or division of*
12 *a depository institution that is a registered in-*
13 *vestment adviser.*

14 “(11) *DEFINITION.*—*For purposes of this sub-*
15 *section, the term ‘Federal securities laws’ means the*
16 *provisions of Federal law governing securities activi-*
17 *ties that are within the jurisdiction of the Securities*
18 *and Exchange Commission under the Securities Act*
19 *of 1933, the Securities Exchange Act of 1934, the In-*
20 *vestment Company Act of 1940, the Investment Advis-*
21 *ers Act of 1940, and the Trust Indenture Act of 1939.*

22 “(n) *FOREIGN BANK FIREWALLS.*—

23 “(1) *IN GENERAL.*—*A foreign bank that operates*
24 *a branch, agency, or commercial lending company in*
25 *the United States and accepts no deposits in the*

1 *United States, either directly or through an affiliate,*
2 *that are insured under the Federal Deposit Insurance*
3 *Act, and any affiliate of such foreign bank, shall not*
4 *be subject to the restrictions of any subsection of this*
5 *section, other than subsections (l) and (m), if the con-*
6 *ditions described in paragraph (2) are met.*

7 “(2) *CONDITIONS FOR APPLICABILITY OF EXCEP-*
8 *TION.—The conditions of this paragraph have been*
9 *met with respect to any foreign bank referred to in*
10 *paragraph (1) if—*

11 “(A) *transactions between a securities affili-*
12 *ate of such foreign bank and any branch, agency*
13 *or commercial lending company operated in the*
14 *United States by such foreign bank comply with*
15 *the provisions of sections 23A and 23B of the*
16 *Federal Reserve Act as if the foreign bank were*
17 *a member bank; and*

18 “(B) *such foreign bank has received a deter-*
19 *mination from the Board that the bank meets*
20 *capital standards comparable to those established*
21 *by the Board for well capitalized financial serv-*
22 *ices holding companies, giving due regard to the*
23 *principle of national treatment and equality of*
24 *competitive opportunity, subject to any changes*

1 the Board may adopt with respect to such stand-
2 ards.

3 “(3) *APPLICABILITY OF SUBSECTION (1) TO FOR-*
4 *EIGN BANKS.*—Any limitation, restriction, condition,
5 or modification adopted by the Board under sub-
6 section (1) may be applied by the Board to—

7 “(A) a foreign bank described in paragraph
8 (1) (and any company that owns or controls
9 such foreign bank);

10 “(B) any branch, agency or commercial
11 lending company operated by such foreign bank
12 in the United States; or

13 “(C) any other affiliate of such foreign bank
14 in the United States,

15 if such limitation, restriction, condition, or modifica-
16 tion is applied by regulation or order of general ap-
17 plicability under section 12(a)(2)(B)(ii) to wholesale
18 financial institutions and securities affiliates con-
19 trolled by investment bank holding companies, subject
20 to such modifications, conditions, or exemptions as
21 the Board deems appropriate, giving due regard to
22 the principle of national treatment and equality of
23 competitive opportunity.”.

24 (b) *AMENDMENT TO THE FEDERAL RESERVE ACT.*—
25 Section 23B(b)(1)(B) of the Federal Reserve Act (12 U.S.C.

1 371c-l(b)(1)(B)) is amended by inserting “and for 30 days
 2 thereafter” after “during the existence of any underwriting
 3 or selling syndicate”.

4 (c) EXEMPTION FROM SECTION 305(b) OF THE FED-
 5 ERAL POWER ACT.—Section 305(b) of the Federal Power
 6 Act shall not apply to any person now holding, or propos-
 7 ing to hold, at the same time the position of officer or direc-
 8 tor of a public utility and the position of officer or director
 9 of a bank, trust company, banking association, or firm per-
 10 mitted by section 10 of the Financial Services Holding
 11 Company Act of 1995 (as amended by section 103(a) of this
 12 Act) to underwrite or participate in the marketing of secu-
 13 rities (including commercial paper) of a public utility, if
 14 that bank, trust company, banking association, or firm does
 15 not underwrite or participate in the marketing of securities
 16 of the public utility for which the person serves, or proposes
 17 to serve, as an officer or director.

18 (d) AMENDMENT TO THE RIGHT TO FINANCIAL PRI-
 19 VACY ACT.—Section 1112(e) of the Right to Financial Pri-
 20 vacy Act (12 U.S.C. 3412(e)) is amended as follows—

21 (1) by striking “this title” and inserting “law”;

22 and

23 (2) by inserting “, examination reports,” after
 24 “financial records”.

1 (e) *REGULATIONS TO PRESERVE SEPARATION OF*
 2 *BANKING AND COMMERCE.*—Section 5(b) of the Bank Hold-
 3 *ing Company Act of 1956 (12 U.S.C. 1844(b)) is amended*
 4 *by inserting “, including the protection of depository insti-*
 5 *tutions and the separation of banking and commerce,” after*
 6 *“purposes of this Act”.*

7 ***SEC. 105. OWNERSHIP OF SHARES OF CERTAIN COMPANIES***
 8 ***BY FINANCIAL SERVICES HOLDING COMPA-***
 9 ***NIES.***

10 *Section 4 of the Bank Holding Company Act of 1956*
 11 *(12 U.S.C. 1843) is amended by adding at the end the fol-*
 12 *lowing new subsection:*

13 “(k) *OWNERSHIP OF SHARES OF CERTAIN COMPANIES*
 14 *BY FINANCIAL SERVICES HOLDING COMPANIES.*—

15 “(1) *NONCONFORMING FINANCIAL COMPANIES.*—
 16 *Notwithstanding section 4(a), a financial services*
 17 *holding company may retain direct or indirect own-*
 18 *ership or control of voting shares of any company*
 19 *that—*

20 “(A) *engages solely in activities that the*
 21 *Board finds to be financial but which the Board*
 22 *has not authorized under section 4(c)(8) (and*
 23 *such other financial activities that the Board has*
 24 *authorized) if—*

1 “(i) the financial services holding com-
2 pany acquired the shares of a company en-
3 gaged in such activities or of each company
4 to which the company engaged in such ac-
5 tivities is a successor more than 2 years be-
6 fore the date that such financial services
7 holding company becomes a financial serv-
8 ices holding company;

9 “(ii) the aggregate investment by the
10 financial services holding company in
11 shares of all such companies does not exceed
12 10 percent of the total consolidated capital
13 and surplus of the financial services holding
14 company as of the date that the holding
15 company becomes a financial services hold-
16 ing company or as of the date of any addi-
17 tional investment by the financial services
18 holding company in such shares;

19 “(iii) more than 50 percent of the ag-
20 gregate gross revenues of the financial serv-
21 ices holding company and the subsidiaries
22 of such holding company for each of the 2
23 calendar years before the date the holding
24 company becomes a financial services hold-
25 ing company were attributable to securities

1 *activities described in subparagraphs (A)*
2 *and (B) of section 10(a)(1), as determined*
3 *without taking into account any activities*
4 *(other than securities activities) in which fi-*
5 *nancial services holding companies were*
6 *permitted to engage before the date of the*
7 *enactment of the Financial Services Com-*
8 *petitiveness Act of 1995; and*

9 *“(iv) the company engaged in such ac-*
10 *tivities continues to engage only in activi-*
11 *ties that such company conducted as of the*
12 *date that such financial services holding*
13 *company becomes a financial services hold-*
14 *ing company (or other activities permitted*
15 *under section 4(c)(8) or section 10); or*

16 *“(B) engages in activities not authorized*
17 *under section 4 if—*

18 *“(i) the financial services holding com-*
19 *pany held the shares of any company en-*
20 *gaged in such activities as of the date of the*
21 *enactment of the Financial Services Com-*
22 *petitiveness Act of 1995 and the financial*
23 *services holding company was then exempt*
24 *from the provisions of section 4 pursuant to*
25 *section 4(d) as of such date;*

1 “(ii) the company engaged in such ac-
2 tivities continues to engage only in the same
3 general lines of business and related activi-
4 ties that such company conducted as of the
5 date of the enactment of the Financial Serv-
6 ices Competitiveness Act of 1995 (or other
7 activities permitted under section 4(c) or
8 section 10); and

9 “(iii) 80 percent of the aggregate gross
10 revenues of the financial services holding
11 company and the subsidiaries of such hold-
12 ing company as of the date of the enactment
13 of the Financial Services Competitiveness
14 Act of 1995 was attributable to—

15 “(I) ownership and operation of
16 depository institutions;

17 “(II) activities that are financial
18 in nature as determined by the Board
19 pursuant to section 4(c)(8);

20 “(III) activities permissible under
21 section 10; and

22 “(IV) such other activities that
23 would be permissible generally for the
24 holding company as a financial serv-

1 *ices holding company (other than as*
2 *an investment bank holding company).*

3 *“(2) NONFINANCIAL COMPANIES.—*

4 *“(A) IN GENERAL.—Notwithstanding sec-*
5 *tion 4(a), a financial services holding company*
6 *described in paragraph (1)(A)(iii) may, during*
7 *the 5-year period beginning on the date that the*
8 *company becomes a financial services holding*
9 *company, retain direct or indirect ownership or*
10 *control of voting shares of any company that the*
11 *financial services holding company owns or con-*
12 *trols on the date such holding company becomes*
13 *a financial services holding company.*

14 *“(B) EXTENSION OF DIVESTITURE PE-*
15 *RIOD.—The Board may extend the period de-*
16 *scribed in subparagraph (A) for an additional*
17 *period not to exceed 5 years if the Board—*

18 *“(i) determines that such extension is*
19 *necessary to avert substantial loss to the fi-*
20 *nancial services holding company; and*

21 *“(ii) finds that the financial services*
22 *holding company has made good faith ef-*
23 *forts to divest such shares.*

24 *“(C) NO EXPANSION OF NONFINANCIAL COM-*
25 *PANIES PRIOR TO DIVESTITURE.—Unless an ac-*

1 *quisition or activity is permitted in accordance*
2 *with section 3 or 4(c)—*

3 *“(i) no financial services holding com-*
4 *pany, and no company whose shares are*
5 *owned or controlled by a financial services*
6 *holding company in accordance with this*
7 *paragraph, may acquire any interest in or*
8 *assets of any other company, and*

9 *“(ii) no company whose shares are*
10 *owned or controlled by a financial services*
11 *holding company pursuant to this para-*
12 *graph may engage directly or indirectly in*
13 *any activity that the company did not con-*
14 *duct on the day before the financial services*
15 *holding company registered as a financial*
16 *services holding company.*

17 *“(3) RESTRICTIONS ON JOINT MARKETING.—No*
18 *depository institution (and no subsidiary of such in-*
19 *stitution) shall—*

20 *“(A) offer or market, directly or indirectly*
21 *through any arrangement, any product or service*
22 *of any affiliate whose shares are owned or con-*
23 *trolled by the financial services holding company*
24 *pursuant to this subsection or section 10(j); or*

1 “(B) permit any of such depository institu-
 2 tion’s or subsidiary’s products or services to be
 3 offered or marketed, directly or indirectly
 4 through any arrangement, by or through any af-
 5 filiate whose shares are owned or controlled by
 6 the financial services holding company pursuant
 7 to this subsection or section 10(j),
 8 unless, in a case involving an affiliate held under this
 9 subsection, the product or service is permissible for fi-
 10 nancial services holding companies to provide under
 11 section 4(c)(8) or 10.

12 “(4) *DEPOSITORY INSTITUTION DEFINED.*—For
 13 purposes of paragraph (3), the term ‘depository insti-
 14 tution’ includes a foreign bank.”.

15 **SEC. 106. PROVISIONS APPLICABLE TO LIMITED PURPOSE**
 16 **BANKS.**

17 (a) *EXCEPTION TO RESTRICTION ON ASSET GROWTH*
 18 *OF NONBANK BANKS.*—

19 (1) *IN GENERAL.*—Section 4(f)(3) of the Bank
 20 Holding Company Act of 1956 (12 U.S.C. 1843(f)(3))
 21 is amended by adding at the end the following new
 22 subparagraph:

23 “(D) *EXCEPTION TO RESTRICTION ON*
 24 *ASSET GROWTH, ACTIVITIES, AND CERTAIN*
 25 *CROSS-MARKETING RESTRICTIONS.*—

1 “(i) *QUALIFICATION FOR EXCEPTION*
2 *FROM GROWTH RESTRICTION.*—A bank con-
3 trolled by a company described in para-
4 graph (1) shall not be subject to the limita-
5 tion contained in subparagraph (B)(iv) if
6 the company meets the requirements of this
7 subparagraph and the requirements of para-
8 graph (14).

9 “(ii) *QUALIFICATION FOR EXCEPTION*
10 *FROM ACTIVITIES RESTRICTION.*—Notwith-
11 standing subparagraph (B)(i), a bank con-
12 trolled by a company described in para-
13 graph (1) that meets the requirements of
14 clause (i) may engage in an activity au-
15 thorized under applicable law (other than
16 an activity that would have resulted in the
17 institution being a bank for purposes of this
18 Act, as in effect on the day before the date
19 of the enactment of the Competitive Equal-
20 ity Banking Act of 1987, based on the ac-
21 tivities each bank conducted on March 5,
22 1987, as reported to the Board) if such
23 bank, at least 60 days before commencing
24 such activity, has notified the Board of the

1 *bank's intention to commence such activity*
2 *and either—*

3 “(I) *the Board has notified such*
4 *bank that the Board will not dis-*
5 *approve the proposed activity as un-*
6 *safe or unsound; or*

7 “(II) *the Board has not, within*
8 *60 days after receiving such notice,*
9 *disapproved the proposal on the basis*
10 *of such criteria.*

11 “(iii) *QUALIFICATION FOR EXCEPTION*
12 *FROM CROSS-MARKETING RESTRICTION.—*
13 *Notwithstanding subparagraph (B)(ii), a*
14 *bank controlled by a company described in*
15 *paragraph (1) that meets the requirements*
16 *of clause (i) may offer or market products*
17 *or services of an affiliate or permit the*
18 *bank's products or services to be offered or*
19 *marketed in connection with products or*
20 *services of an affiliate if such products or*
21 *services are offered or marketed only to the*
22 *extent permissible for banks or financial*
23 *services holding companies to provide by*
24 *law, regulation, or order under paragraph*
25 *(8) or (15) of subsection (c).*

1 “(iv) *EXCEPTION FROM DIVESTITURE*
2 *REQUIREMENT FOR BANKS RESTORED TO*
3 *WELL CAPITALIZED LEVEL.—If any bank*
4 *controlled by a company that meets the re-*
5 *quirements of clause (i) ceases to be well*
6 *capitalized, the company shall divest control*
7 *of such bank in accordance with paragraph*
8 *(4) unless—*

9 “(I) *within 12 months after the*
10 *date the bank ceases to be well capital-*
11 *ized, the capital of the bank is restored*
12 *to the well capitalized level; and*

13 “(II) *after the end of such 12-*
14 *month period, the bank remains well*
15 *capitalized, subject to the capital res-*
16 *toration requirements in subclause (I).*

17 “(v) *ACTION REQUIRED IF BANK*
18 *CEASES TO BE ADEQUATELY CAPITAL-*
19 *IZED.—If any bank controlled by a com-*
20 *pany that meets the requirements of clause*
21 *(i) ceases to be adequately capitalized, the*
22 *company shall, within 30 days after the*
23 *date as of which the bank ceases to be ade-*
24 *quately capitalized—*

1 “(I) execute an agreement with
 2 the Board to divest control of such
 3 bank in accordance with paragraph
 4 (4); or

5 “(II) restore the capital of the
 6 bank to at least the adequately capital-
 7 ized level.”.

8 (2) QUALIFICATIONS FOR COMPANIES UNDER
 9 PARAGRAPH (3)(D).—Section 4(f) of the Bank Holding
 10 Company Act of 1956 (12 U.S.C. 1843(f)) is amended
 11 by adding at the end the following new paragraph:

12 “(14) QUALIFICATIONS FOR COMPANIES UNDER
 13 PARAGRAPH (3)(D).—A company meets the require-
 14 ments of paragraph (3)(D)(i) if—

15 “(A) the company (based on consolidated
 16 revenues) engages in activities that are financial
 17 (including activities not authorized under sub-
 18 section (c)(8)) and predominantly in—

19 “(i) banking;

20 “(ii) activities that the Board has de-
 21 termined under subsection (c)(8) to be fi-
 22 nancial in nature or incidental to such fi-
 23 nancial activities;

1 “(iii) activities permitted under sub-
 2 paragraph (A) or (B) of section 10(a)(1);
 3 and

4 “(iv) other activities that would be per-
 5 missible for such company as a financial
 6 services holding company (other than as an
 7 investment bank holding company);

8 “(B) all insured depository institutions con-
 9 trolled by such company are well capitalized and
 10 well managed;

11 “(C) the bank and any affiliate of the bank
 12 that is engaged in securities activities described
 13 in section 10(a) comply with the safeguards con-
 14 tained in section 11 as if that affiliate were a
 15 securities affiliate; and

16 “(D) the company has provided at least 60
 17 days prior written notice to the Board and, dur-
 18 ing that period, the Board has not disapproved
 19 the proposal.”.

20 (b) AMENDED DIVESTITURE PROCEDURE FOR CER-
 21 TAIN COMPANIES.—Section 4(f)(4) of the Bank Holding
 22 Company Act of 1956 (12 U.S.C. 1843(f)(4)) is amended
 23 by adding at the end the following: “If any company de-
 24 scribed in paragraph (1) which meets the requirements of
 25 paragraph (3)(D)(i) fails to qualify for the exemption pro-

1 vided under paragraph (2), such company shall divest, in
 2 accordance with this paragraph, control of each bank the
 3 company controls unless, within 12 months after the date
 4 that the company fails to comply with the provisions of
 5 paragraph (2), the company has corrected the condition or
 6 ceased the activity that led to the failure to comply.”.

7 (c) *CONVERSION OF CERTAIN NONBANK HOLDING*
 8 *COMPANIES TO FINANCIAL SERVICES HOLDING COMPA-*
 9 *NIES.*—Section 4(f) of the Bank Holding Company Act of
 10 1956 (12 U.S.C. 1843(f)) is amended by inserting after
 11 paragraph (14) (as added by subsection (a)(2)) the follow-
 12 ing new paragraph:

13 “(15) *CONVERSION OF CERTAIN COMPANIES TO*
 14 *FINANCIAL SERVICES HOLDING COMPANIES.*—

15 “(A) *IN GENERAL.*—During the 18-month
 16 period beginning on the date of the enactment of
 17 the Financial Services Competitiveness Act of
 18 1995, any company described in paragraph (1)
 19 may become a financial services holding com-
 20 pany if—

21 “(i) the company (on a consolidated
 22 basis) engages in activities that are finan-
 23 cial (including activities not authorized
 24 under subsection (c)(8)) and predominantly
 25 in—

1 “(I) banking;

2 “(II) activities that the Board has
3 determined under subsection (c)(8) to
4 be financial in nature or incidental to
5 such financial activities;

6 “(III) activities permitted under
7 subparagraph (A) or (B) of section
8 10(a)(1); and

9 “(IV) other activities that would
10 be permissible for such company as a
11 financial services holding company
12 (other than an investment bank hold-
13 ing company);

14 “(ii) all insured depository institutions
15 controlled by such company are well cap-
16 italized and well managed;

17 “(iii) the company provides written
18 notice to the Board under sections 4 and 10
19 at least 60 days before the company becomes
20 a financial services holding company; and

21 “(iv) the Board does not object to such
22 transaction before the end of such 60-day
23 period.

24 “(B) RETENTION OF FINANCIAL COMPA-
25 NIES.—

1 “(i) *IN GENERAL.*—Notwithstanding
2 subsection (a), a company that becomes a
3 financial services holding company pursu-
4 ant to subparagraph (A) may retain direct
5 or indirect ownership or control of voting
6 shares of any company that engages solely
7 in activities that the Board finds to be fi-
8 nancial but which the Board has not au-
9 thorized under subsection (c)(8) (and such
10 other financial activities that the Board has
11 authorized) if the financial services holding
12 company acquired the shares of such com-
13 pany, or of each company to which such
14 company is a successor, before January 1,
15 1995.

16 “(ii) *LIMITS ON EXPANSION FOLLOW-*
17 *ING REGISTRATION.*—A company that be-
18 comes a financial services holding company
19 pursuant to this paragraph, and any com-
20 pany whose shares are owned or controlled
21 by a financial services holding company
22 pursuant to this paragraph, shall be subject
23 to the limitations contained in paragraphs
24 (2)(C) and (3) of section 4(k) as if the ac-

1 *tivities or shares of such company were con-*
2 *ducted or held pursuant to section 4(k)(2).*

3 *“(iii) PERIOD TO CONFORM OTHER AC-*
4 *TIVITIES.—Notwithstanding subsection (a),*
5 *a company that becomes a financial services*
6 *holding company pursuant to subparagraph*
7 *(A) may retain direct or indirect ownership*
8 *or control of voting shares of any company*
9 *not otherwise permitted under this section*
10 *for the period provided in, and subject to*
11 *the conditions contained in, paragraphs (2)*
12 *and (3) of section 4(k).*

13 *“(C) ELECTION FOR REDUCED SUPER-*
14 *VISION.—Any company that becomes a financial*
15 *services holding company pursuant to subpara-*
16 *graph (A) may elect to be governed by the provi-*
17 *sions of paragraphs (3), (4), (5), and (6) of sec-*
18 *tion 5(g), subject to the requirements of such sec-*
19 *tion, if—*

20 *“(i) the company, and any insured de-*
21 *pository institution controlled by such com-*
22 *pany, meet the requirements of section 5(g)*
23 *(other than the requirements of paragraph*
24 *(2)(A) of such section);*

1 “(ii) the company does not acquire
 2 more than 5 percent of the shares of any ad-
 3 ditional depository institution after the date
 4 that such company becomes a financial
 5 services holding company; and

6 “(iii) no depository institution con-
 7 trolled by such company acquires, estab-
 8 lishes, or operates an additional branch of-
 9 fice after the date that the company becomes
 10 a financial services holding company.”.

11 **SEC. 107. SECURITIES COMPANY AFFILIATIONS OF FDIC—**
 12 **INSURED BANKS.**

13 (a) *IN GENERAL.*—Section 18 of the Federal Deposit
 14 Insurance Act (12 U.S.C. 1828) is amended by adding at
 15 the end the following new subsections:

16 “(s) *SECURITIES AFFILIATIONS OF BANKS.*—

17 “(1) *IN GENERAL.*—A bank shall not be an affili-
 18 ate of any company that, directly or indirectly, acts
 19 as an underwriter or dealer of any security, other
 20 than—

21 “(A) a securities affiliate in accordance
 22 with section 10 of the Financial Services Hold-
 23 ing Company Act of 1995; or

24 “(B) a company that underwrites or deals
 25 only in securities described in section 10(g) of

1 *the Financial Services Holding Company Act of*
2 *1995.*

3 “(2) *EXCEPTIONS.*—

4 “(A) *CERTAIN BANKS NOT INCLUDED.*—*For*
5 *purposes of this subsection, the term ‘bank’ does*
6 *not include—*

7 “(i) *an insured bank described in sub-*
8 *paragraph (D), (F), or (H) of section*
9 *2(c)(2) of the Financial Services Holding*
10 *Company Act of 1995; and*

11 “(ii) *a Federal branch or an insured*
12 *branch (as defined in section 3 of the Fed-*
13 *eral Deposit Insurance Act).*

14 “(B) *AFFILIATIONS WITH EDGE ACT AND*
15 *AGREEMENT CORPORATIONS.*—*Paragraph (1)*
16 *shall not apply with respect to the affiliation of*
17 *a bank with a company held pursuant to section*
18 *25 or 25A of the Federal Reserve Act or section*
19 *4(c)(13) of the Financial Services Holding Com-*
20 *pany Act of 1995.*

21 “(3) *GRANDFATHER PROVISION.*—*This subsection*
22 *shall not apply with respect to—*

23 “(A) *an affiliation that existed on January*
24 *1, 1995; or*

1 “(B) any new affiliation by an insured
2 bank that has an affiliation that would be pro-
3 hibited if the affiliation were not covered by sub-
4 paragraph (A).

5 “(4) DEFINITIONS.—For purposes of this sub-
6 section, the following definitions shall apply:

7 “(A) BROKER.—The term ‘broker’ has the
8 meaning given to such term in section 3(a)(4) of
9 the Securities Exchange Act of 1934.

10 “(B) DEALER.—The term ‘dealer’ has the
11 meaning given to such term in section 3(a)(5) of
12 the Securities Exchange Act of 1934.

13 “(C) SECURITY.—The term ‘security’ has
14 the meaning given to such term in section 10(k)
15 of the Financial Services Holding Company Act
16 of 1995.

17 “(D) UNDERWRITER.—The term ‘under-
18 writer’ has the meaning given to such term in
19 section 2(11) of the Securities Act of 1933.

20 “(5) AFFILIATE.—For purposes of this sub-
21 section, a separately identifiable department or divi-
22 sion (as defined in section 3(a) of the Securities Ex-
23 change Act of 1934) of a bank shall be deemed to be
24 a company which is an affiliate of the bank.

1 “(t) *BROKER-DEALER REGISTRATION.*—An insured
 2 bank may not use the United States mails or any means
 3 or instrumentality of interstate commerce to act as a broker
 4 or dealer without registration under the Securities Ex-
 5 change Act of 1934—

6 “(1) except to the extent permitted under the cir-
 7 cumstances described in paragraph (4) or (5) of sec-
 8 tion 3(a) of such Act; or

9 “(2) unless otherwise exempt from registrations
 10 as a broker or dealer pursuant to regulations pre-
 11 scribed by the Securities and Commission.

12 “(u) *EXAMINATION REPORTS.*—The Federal banking
 13 agencies shall, to the maximum extent practicable, use the
 14 reports of examination of any broker, dealer, investment ad-
 15 viser, or investment company made by or on behalf of the
 16 Securities and Exchange Commission and reports made by
 17 or on behalf of a registered securities association or national
 18 securities exchange and shall defer to such examination for
 19 compliance with Federal securities laws.”.

20 (b) *STUDY OF RISKS TO DEPOSIT INSURANCE SYS-*
 21 *TEM.*—

22 (1) *STUDY REQUIRED.*—During the 6-month pe-
 23 riod beginning 18 months after the date of the enact-
 24 ment of the Financial Services Competitiveness Act of
 25 1995, the Federal Deposit Insurance Corporation

1 *shall conduct a study of the risks posed to the deposit*
2 *insurance funds by—*

3 *(A) the affiliation of insured depository in-*
4 *stitutions with securities affiliates and other in-*
5 *stitutions described in subsection (s)(1) of section*
6 *18 of the Federal Deposit Insurance Act (as*
7 *added by subsection (a) of this section); or*

8 *(B) any activity described in section 10(a)*
9 *(as added by section 103(a) of this Act) of the*
10 *Financial Services Holding Company Act of*
11 *1995 (as so redesignated by section 128(a) of this*
12 *Act) in which insured depository institutions*
13 *may engage in accordance with any provision of*
14 *Federal or State law.*

15 *(2) REPORT TO CONGRESS AND GAO.—*

16 *(A) IN GENERAL.—Before the end of the 6-*
17 *month period described in paragraph (1), the*
18 *Federal Deposit Insurance Corporation shall*
19 *submit a report to the Congress on the findings*
20 *and conclusions of the Corporation with respect*
21 *to the study conducted under such paragraph, to-*
22 *gether with such conclusions for administrative*
23 *or legislative action as the Corporation may de-*
24 *termine to be appropriate.*

1 (B) *DETAILS OF SPECIFIC RISKS.*—If the
2 Federal Deposit Insurance Corporation concludes
3 that certain kinds of activities not specifically
4 authorized by statute for insured depository in-
5 stitutions before the date of the enactment of this
6 Act, or the affiliation of insured depository insti-
7 tutions with securities affiliates engaged in cer-
8 tain kinds of securities activities, pose a greater
9 risk to the deposit insurance funds than activi-
10 ties specifically authorized by statute for na-
11 tional banks before January 1, 1995, the report
12 submitted under subparagraph (A) shall contain
13 a detailed explanation of the basis for such con-
14 clusion.

15 (C) *TRANSMITTAL TO GAO.*—The Federal
16 Deposit Insurance Corporation shall transmit a
17 copy of the report referred to in paragraph (1)
18 to the Comptroller General.

19 (3) *ACTION BY FDIC.*—If the Federal Deposit In-
20 surance Corporation concludes that any activity or
21 affiliation with respect to insured depository institu-
22 tions poses a greater risk to any deposit insurance
23 fund than the risk posed by activities specifically au-
24 thorized by statute for national banks before January
25 1, 1995, the Federal Deposit Insurance Corporation

1 *shall treat such conclusion as a factor to be considered*
 2 *in setting semiannual assessments under section*
 3 *7(b)(2)(A) of the Federal Deposit Insurance Act.*

4 (4) *EVALUATION OF REPORT BY GAO.—The*
 5 *Comptroller General shall—*

6 (A) *evaluate the report transmitted by the*
 7 *Federal Deposit Insurance Corporation to the*
 8 *Comptroller General under paragraph (2); and*

9 (B) *submit a report to the Congress on such*
 10 *evaluation, including a discussion on the meth-*
 11 *odology used by the Corporation to assess risks*
 12 *posed by nonbanking activities to the deposit in-*
 13 *surance funds.*

14 **SEC. 108. AUTHORITY TO TERMINATE GRANDFATHER**
 15 **RIGHTS UNDER THE INTERNATIONAL BANK-**
 16 **ING ACT OF 1978.**

17 *Section 8(c) of the International Banking Act of 1978*
 18 *(12 U.S.C. 3106(c)) is amended by adding at the end the*
 19 *following new paragraph:*

20 “(3) *PARITY IN CONDUCT OF AUTHORIZED SECU-*
 21 *RITIES ACTIVITIES.—*

22 “(A) *IN GENERAL.—Notwithstanding the*
 23 *provisions of paragraph (1) or any other provi-*
 24 *sion of law, any authority conferred under this*
 25 *subsection on any foreign bank or company with*

1 *respect to securities activities authorized for fi-*
2 *nancial services holding companies in the United*
3 *States shall terminate 30 days following ap-*
4 *proval by the Board of an application by such*
5 *foreign bank or company under section 10 of the*
6 *Financial Services Holding Company Act of*
7 *1995.*

8 “(B) *AUTHORITY TO IMPOSE CONDITIONS.—*
9 *If a foreign bank or company that engages di-*
10 *rectly or through an affiliate in any securities*
11 *activity pursuant to paragraph (1) has not re-*
12 *ceived approval by the Board under section 10 of*
13 *the Financial Services Holding Company Act of*
14 *1995 to control a securities affiliate by the end*
15 *of the 3-year period beginning on the effective*
16 *date of such Act, the Board may impose such*
17 *limitations and restrictions, including the termi-*
18 *nation of any activities conducted under para-*
19 *graph (1) or a requirement that such activities*
20 *be conducted in compliance with the safeguards*
21 *of section 11 of such Act, as the Board considers*
22 *appropriate consistent with the purposes of this*
23 *Act and the Financial Services Holding Com-*
24 *pany Act of 1995.’’.*

1 **SEC. 109. EFFECT ON STATE LAWS PROHIBITING THE AF-**
2 **FILIATION OF BANKS AND SECURITIES COM-**
3 **PANIES.**

4 (a) *IN GENERAL.*—Section 7 of the Bank Holding
5 Company Act of 1956 (12 U.S.C. 1846) is amended by add-
6 ing at the end the following new subsection:

7 “(c) *AFFILIATIONS AND ACTIVITIES.*—No State may
8 prohibit or limit—

9 “(1) the affiliation of a bank or financial serv-
10 ices holding company with a securities affiliate solely
11 because the securities affiliate is engaged in activities
12 described in subparagraph (A) or (B) of section
13 10(a)(1); or

14 “(2) the insurance or other activities of a sub-
15 sidiary of a financial services holding company solely
16 because the financial services holding company is no
17 longer exempt under this Act pursuant to section
18 4(d).”

19 (b) *BANK ACTIVITIES.*—No provision of this Act, and
20 no amendment made by this Act to any other provision of
21 law (other than section 10 or 11 of the Financial Services
22 Holding Company Act of 1995 (as added by sections 103
23 and 104 of this Act), section 18(s) of the Federal Deposit
24 Insurance Act (as added by section 107 of this Act), or any
25 amendments made by title II of this Act), may be construed
26 as affecting the authority of any bank to engage in any

1 *activity authorized for such bank under the law of such*
2 *bank's home State (as defined in section 2(o)(4) of the Fi-*
3 *nancial Services Holding Company Act of 1995).*

4 ***SEC. 110. MUNICIPAL SECURITIES.***

5 *The paragraph designated the "Seventh" of section*
6 *5136 of the Revised Statutes of the United States (12 U.S.C.*
7 *24) is amended by adding at the end the following new sen-*
8 *tences: "Notwithstanding any limitation and restriction*
9 *contained in this paragraph relating to dealing, underwrit-*
10 *ing, and purchasing securities and in addition to any au-*
11 *thorization in this paragraph to deal in, underwrite or pur-*
12 *chase securities, a national bank may deal in, underwrite,*
13 *and purchase for such association's own account any obli-*
14 *gation (including general and limited obligation bonds, rev-*
15 *enue bonds and obligations that satisfy the requirements of*
16 *section 142(b)(1) of the Internal Revenue Code of 1986) is-*
17 *sued by or on behalf of any State or political subdivision*
18 *of a State, including any municipal corporate instrumen-*
19 *talities of 1 or more States, or any public agency or author-*
20 *ity of any State or political subdivision of a State, if the*
21 *national bank—*

22 *"(1) is well capitalized (as defined in section*
23 *38(b) of the Federal Deposit Insurance Act); and*

24 *"(2) engages in the business of banking."*

1 **SEC. 111. INTERAGENCY AGREEMENT RELATING TO RETAIL**
 2 **SALES OF CERTAIN NONDEPOSIT INVEST-**
 3 **MENT PRODUCTS.**

4 *Section 18 of the Federal Deposit Insurance Act (12*
 5 *U.S.C. 1828) is amended by inserting after subsection (u)*
 6 *(as added by section 107 of this Act) the following new sub-*
 7 *section:*

8 *“(v) JOINT STANDARDS RELATING TO RETAIL SALES*
 9 *OF CERTAIN NONDEPOSIT INVESTMENT PRODUCTS.—*

10 *“(1) IN GENERAL.—The appropriate Federal*
 11 *banking agencies shall jointly prescribe, after consult-*
 12 *ing with and considering the views of the Securities*
 13 *and Exchange Commission, standards applicable to*
 14 *any insured depository institution which—*

15 *“(A) is not registered as a broker under the*
 16 *Securities Exchange Act of 1934; and*

17 *“(B) effects transactions in securities issued*
 18 *by an investment company or annuities.*

19 *“(2) SCOPE OF STANDARDS.—The standards re-*
 20 *quired under paragraph (1) with respect to securities*
 21 *and annuities referred to in such paragraph shall, at*
 22 *a minimum, establish requirements with respect to—*

23 *“(A) sales practices;*

24 *“(B) disclosures and advertising in connec-*
 25 *tion with transactions in such securities and an-*
 26 *nuities, including—*

1 “(i) the content, form, and timing of
2 any such disclosure; and

3 “(ii) disclaimers concerning the
4 noninsured status of the security or annu-
5 ity;

6 “(C) the compensation of sales personnel
7 with respect to referrals or transactions;

8 “(D) the training of and qualifications for
9 personnel involved in such transactions, includ-
10 ing training in making an accurate judgment
11 about the suitability of a particular investment
12 product for a prospective customer; and

13 “(E) the setting in which and the cir-
14 cumstances under which transactions may be ef-
15 fected, and referrals made, by sales personnel
16 with respect to such securities and annuities.”.

17 **SEC. 112. EFFECTIVE DATE.**

18 *The amendments made by this subtitle shall take effect*
19 *at the end of the 90-day period beginning on the date of*
20 *the enactment of this Act.*

21 ***Subtitle B—Investment Bank***
22 ***Holding Companies***

23 **SEC. 116. INVESTMENT BANK HOLDING COMPANIES.**

24 (a) *DEFINITIONS.*—

1 (1) *IN GENERAL.*—Section 2 of the Bank Hold-
2 ing Company Act of 1956 (12 U.S.C. 1842) is amend-
3 ed by adding at the end the following new subsections:

4 “(s) *WHOLESALE FINANCIAL INSTITUTION.*—The term
5 ‘wholesale financial institution’ means any institution that
6 is an uninsured State member bank authorized pursuant
7 to section 9B of the Federal Reserve Act.

8 “(t) *INVESTMENT BANK HOLDING COMPANY.*—The
9 term ‘investment bank holding company’ means any finan-
10 cial services holding company that—

11 “(1) controls a company engaged in underwrit-
12 ing corporate equity securities pursuant to section 10;

13 “(2) controls a wholesale financial institution;
14 and

15 “(3) if the company is a foreign bank that oper-
16 ates a branch, agency or commercial lending com-
17 pany in the United States, or is a company that con-
18 trols such foreign bank, is treated as an investment
19 bank holding company because such bank or company
20 meets the criteria in section 12(b) and has received
21 the determination required by such section.”.

22 (2) *DEFINITION OF BANK INCLUDES WHOLESALE*
23 *FINANCIAL INSTITUTION.*—Section 2(c)(1) of the Bank
24 Holding Company Act of 1956 (12 U.S.C. 1841(c)(1))

1 *is amended by adding at the end the following new*
 2 *subparagraph:*

3 *“(C) A wholesale financial institution.”.*

4 *(b) INVESTMENT BANK HOLDING COMPANIES.—The*
 5 *Bank Holding Company Act of 1956 (12 U.S.C. 1841 et*
 6 *seq.) is amended by inserting after section 11 (as added by*
 7 *section 104 of this Act) the following new section:*

8 **“SEC. 12. INVESTMENT BANK HOLDING COMPANIES.**

9 *“(a) PERMISSIBLE AFFILIATIONS FOR INVESTMENT*
 10 *BANK HOLDING COMPANIES.—*

11 *“(1) FINANCIAL ACTIVITIES.—*

12 *“(A) ACTIVITIES AUTHORIZED.—An invest-*
 13 *ment bank holding company may directly or in-*
 14 *directly own or control shares of any company*
 15 *engaged in any activity the Board has deter-*
 16 *mined to be financial in nature or incidental to*
 17 *a financial activity (other than activities ex-*
 18 *pressly limited under subsection (c)(8)), or any*
 19 *activity in compliance with subparagraph (B) or*
 20 *(C).*

21 *“(B) INCIDENTAL ACTIVITIES.—*

22 *“(i) IN GENERAL.—Notwithstanding*
 23 *subparagraph (A), the aggregate investment*
 24 *by an investment bank holding company in*
 25 *shares of companies that engage in non-*

1 *financial activities and financial activities*
2 *(other than those otherwise permitted under*
3 *this section) shall not at any time exceed*
4 *7.5 percent (or such greater percentage as*
5 *the Board may determine to be appro-*
6 *priate) of the consolidated total risk-weight-*
7 *ed assets of the investment bank holding*
8 *company (excluding assets of companies*
9 *held pursuant to this subparagraph), except*
10 *that the amount invested by the investment*
11 *bank holding company in any 1 company*
12 *(including all affiliates of such company*
13 *other than preexisting affiliates of such in-*
14 *vestment bank holding company) may not*
15 *exceed the amount which is equal to 25 per-*
16 *cent of the total capital and surplus of such*
17 *investment bank holding company.*

18 *“(ii) APPLICABILITY TO SUCCESSOR IN*
19 *INTEREST.—Any successor to any invest-*
20 *ment bank holding company referred to in*
21 *clause (i) may retain any investments made*
22 *pursuant to this subparagraph—*

23 *“(I) during the 5-year period be-*
24 *ginning on the date the succession is*
25 *consummated; and*

1 “(II) with the consent of the
2 Board, for an additional period not to
3 exceed 5 years after the 5-year period
4 referred to in subclause (I),
5 unless the Board determines that the reten-
6 tion of such investment would jeopardize the
7 safety and soundness of any insured deposi-
8 tory institution affiliate of such successor.

9 “(iii) CROSS MARKETING RESTRIC-
10 TIONS.—A wholesale financial institution
11 shall not—

12 “(I) offer or market, directly or
13 through any arrangement, any product
14 or service of an affiliate whose shares
15 are owned or controlled by the invest-
16 ment bank holding company pursuant
17 to this subparagraph or subparagraph
18 (C); or

19 “(II) permit any of such wholesale
20 financial institution’s or subsidiary’s
21 products or services to be offered or
22 marketed, directly or through any ar-
23 rangement, by or through any such af-
24 filiate.

1 “(iv) *USE OF COMMON NAME.*—An in-
2 vestment bank holding company shall not
3 permit a wholesale financial institution to
4 adopt a name which is the same as or simi-
5 lar to, or a variation of, the name or title
6 of an affiliate engaged in activities pursu-
7 ant to subparagraph (B).

8 “(C) *COMMODITIES.*—

9 “(i) *IN GENERAL.*—An investment
10 bank holding company predominantly en-
11 gaged as of January 1, 1995, in securities
12 activities in the United States (or any suc-
13 cessor to any such company) may engage
14 in, or directly or indirectly own or control
15 shares of a company engaged in, activities
16 related to the trading, sale, or investment in
17 commodities and underlying physical prop-
18 erties that were not permissible for bank
19 holding companies to conduct in the United
20 States as of January 1, 1995, provided such
21 investment bank holding company, or any
22 subsidiary of such holding company, was
23 engaged directly, indirectly, or through any
24 such company in any of such activities as
25 of January 1, 1995, in the United States.

1 “(ii) *LIMITATION.*—Notwithstanding
 2 subparagraphs (A) and (B), the aggregate
 3 investment by an investment bank holding
 4 company in activities under this subpara-
 5 graph (other than those otherwise permitted
 6 under this section) shall not at any time ex-
 7 ceed 5 percent of the total consolidated as-
 8 sets of the investment bank holding com-
 9 pany.

10 “(iii) *SUCCESSOR DEFINED.*—For pur-
 11 poses of this subparagraph and subpara-
 12 graph (B), the term ‘successor’ means, with
 13 respect to any investment bank holding
 14 company described in clause (i), any com-
 15 pany that merges with, or acquires control
 16 of, such investment bank holding company.

17 “(D) *QUALIFIED INVESTOR IN AN INVEST-*
 18 *MENT BANK HOLDING COMPANY.*—

19 “(i) *IN GENERAL.*—Notwithstanding
 20 any other provision of Federal or State law,
 21 a qualified investor—

22 “(I) shall not be, or be deemed to
 23 be, an investment bank holding com-
 24 pany, a financial services holding com-

pany, a bank holding company, or any similar organization; and

“(II) shall not be deemed to control any such company or organization or any subsidiary of any such company or organization (other than for purposes of section 23A and 23B of the Federal Reserve Act),

by virtue of the investor’s ownership or control of shares of an investment bank holding company.

“(ii) *QUALIFIED INVESTOR DEFINED.*—For purposes of this subparagraph, the term ‘qualified investor’ means any United States company (including a parent company and all subsidiaries of which the parent company holds at least 80 percent of the total voting equity securities) which since February 27, 1995, has directly or indirectly owned or controlled shares of capital stock representing at least 10 percent, and not more than 45 percent, of the outstanding voting shares or voting power of a company that—

1 “(I) becomes an investment bank
2 holding company or a subsidiary of an
3 investment bank holding company; and

4 “(II) before such company became
5 an investment bank holding company
6 or a subsidiary of an investment bank
7 holding company, had more than 50
8 percent of the company’s assets em-
9 ployed directly or indirectly in securi-
10 ties activities.

11 “(iii) CROSS-MARKETING AND COMMON
12 NAME.—A wholesale financial institution
13 shall not—

14 “(I) offer or market products or
15 services of a qualified investor in the
16 investment bank holding company of
17 which the wholesale financial institu-
18 tion is an affiliate;

19 “(II) permit the institution’s
20 products or services to be offered or
21 marketed in connection with products
22 or services of such qualified investor; or

23 “(III) adopt a name which is the
24 same as or similar to, or a variation

1 of, the name or title of such qualified
2 investor.

3 “(iv) *EXAMINATION AND REPORTING.*—
4 Notwithstanding any other provision of law,
5 the Board may conduct examinations of, or
6 require reports from, a qualified investor
7 only to the extent that the Board reasonably
8 determines that such examinations or re-
9 ports are necessary—

10 “(I) to ensure compliance with
11 this subparagraph; or

12 “(II) to the extent that the quali-
13 fied investor is an affiliate of a whole-
14 sale financial institution for purposes
15 of section 23A of the Federal Reserve
16 Act, to ensure compliance with restric-
17 tions imposed by law or regulation on
18 transactions between the qualified in-
19 vestor and such wholesale financial in-
20 stitution.

21 “(E) *SPECIAL RULE.*—An investment bank
22 holding company that owns and controls shares
23 of a company pursuant to subparagraph (B) or
24 (C) may not own or control shares of a company
25 pursuant to section 4(k).

1 “(F) *CONSOLIDATED TOTAL RISK-WEIGHT-*
2 *ED ASSETS.*—For purposes of this paragraph,
3 the following definitions shall apply:

4 “(i) *IN GENERAL.*—The term ‘consoli-
5 dated total risk-weighted assets’ shall have
6 the meaning given to such term in regula-
7 tions prescribed by the Board as in effect on
8 the date of the enactment of the Financial
9 Services Competitiveness Act of 1995.

10 “(ii) *APPLICATION TO FOREIGN*
11 *BANKS.*—In the case of a foreign bank or a
12 company that owns or controls a foreign
13 bank, the term ‘consolidated total risk-
14 weighted assets’ means total risk-weighted
15 assets held by the foreign bank or company
16 in the United States in any United States
17 branch, agency, or commercial lending com-
18 pany subsidiary, any depository institution
19 controlled by the foreign bank or company,
20 any subsidiary held under the authority of
21 this section, section 3, 4, or 10 (other than
22 paragraph (9) or (13) of section 4(c)), or
23 section 25 or 25A of the Federal Reserve
24 Act.

25 “(2) *SECURITIES ACTIVITIES.*—

1 “(A) *INSTITUTIONS MUST BE WELL CAP-*
2 *ITALIZED.—The Board shall disapprove a notice*
3 *under section 10 by an investment bank holding*
4 *company (or a company seeking to become an*
5 *investment bank holding company) to acquire a*
6 *securities affiliate if any wholesale financial in-*
7 *stitution controlled by the investment bank hold-*
8 *ing company is not well capitalized or would not*
9 *be well capitalized following the transaction.*

10 “(B) *TRANSACTIONS WITH AFFILIATES.—*

11 “(i) *IN GENERAL.—A wholesale finan-*
12 *cial institution controlled by an investment*
13 *bank holding company shall be treated as a*
14 *bank for purposes of the provisions of sec-*
15 *tions 23A and 23B of the Federal Reserve*
16 *Act.*

17 “(ii) *OTHER RESTRICTIONS REGARD-*
18 *ING SECURITIES AFFILIATES DETERMINED*
19 *BY THE BOARD.—A securities affiliate of an*
20 *investment bank holding company, and a*
21 *wholesale financial institution controlled by*
22 *an investment bank holding company, shall*
23 *not be subject to the provisions of section 11,*
24 *except that the securities affiliate and*
25 *wholesale financial institution shall be sub-*

1 *ject to subsections (l) and (m) of such sec-*
 2 *tion in the same manner and to the same*
 3 *extent such paragraphs would apply if the*
 4 *wholesale financial institution were an in-*
 5 *sured depository institution.*

6 “(3) *LIMITATION ON AFFILIATION WITH INSURED*
 7 *DEPOSITORY INSTITUTIONS.—An investment bank*
 8 *holding company may not, directly or indirectly, own*
 9 *or control—*

10 “(A) *any bank, other than a wholesale fi-*
 11 *nancial institution;*

12 “(B) *any savings association;*

13 “(C) *any institution described in section*
 14 *2(c)(2) (other than subparagraphs (C) and (G)*
 15 *of such section); or*

16 “(D) *any institution that accepts—*

17 “(i) *initial deposits of \$100,000 or less,*
 18 *other than on an incidental or occasional*
 19 *basis, or*

20 “(ii) *deposits that are insured under*
 21 *the Federal Deposit Insurance Act.*

22 “(4) *NO DEPOSIT INSURANCE FUND LIABILITY.—*
 23 *No Federal deposit insurance funds may be used in*
 24 *connection with the failure of, or any proposed assist-*

1 *ance to, a wholesale financial institution or an in-*
 2 *vestment bank holding company.*

3 *“(5) CAPITAL OF IBHC.—*

4 *“(A) IN GENERAL.—The Board shall not*
 5 *impose any capital requirement on investment*
 6 *bank holding companies or subsidiaries of such*
 7 *companies (other than depository institutions)*
 8 *unless any such requirement is based upon ap-*
 9 *propriate risk-weighting considerations.*

10 *“(B) APPLICABLE ACCOUNTING PRIN-*
 11 *CIPLES.—In applying any capital standard to*
 12 *investment bank holding companies, or subsidi-*
 13 *aries of such companies, the Board shall utilize*
 14 *uniform accounting principles consistent with*
 15 *generally accepted accounting principles in ac-*
 16 *cordance with section 37(a)(2) of the Federal De-*
 17 *posit Insurance Act.*

18 *“(b) QUALIFICATION OF FOREIGN BANK AS INVEST-*
 19 *MENT BANK HOLDING COMPANY.—*

20 *“(1) IN GENERAL.—Any foreign bank that—*

21 *“(A) operates a branch, agency or commer-*
 22 *cial lending company in the United States (and*
 23 *any company that owns or controls such foreign*
 24 *bank), including a foreign bank that does not*

1 *own or control a wholesale financial institution;*
2 *and*

3 *“(B) controls a security affiliate that en-*
4 *gages in underwriting corporate equity securi-*
5 *ties,*

6 *may request a determination from the Board that*
7 *such bank or company be treated as an investment*
8 *bank holding company.*

9 *“(2) CONDITIONS FOR TREATMENT AS AN IN-*
10 *VESTMENT BANK HOLDING COMPANY.—A foreign bank*
11 *and a company that owns or controls a foreign bank*
12 *may not be treated as an investment bank holding*
13 *company unless the bank and company meet and con-*
14 *tinue to meet the following criteria:*

15 *“(A) NO INSURED DEPOSITS.—No deposits*
16 *held directly by a foreign bank or through an af-*
17 *iliate are insured under the Federal Deposit In-*
18 *surance Act.*

19 *“(B) CAPITAL STANDARDS.—The foreign*
20 *bank meets risk-based capital standards com-*
21 *parable to the capital standards required for a*
22 *wholesale financial institution, giving due re-*
23 *gard to the principle of national treatment and*
24 *equality of competitive opportunity.*

1 “(C) *TRANSACTIONS WITH AFFILIATES.*—
2 *Transactions between a branch, agency, or com-*
3 *mercial lending company subsidiary of the for-*
4 *foreign bank in the United States, and any securi-*
5 *ties affiliate or company in which the foreign*
6 *bank (or any company that owns or controls*
7 *such foreign bank) has invested pursuant to sub-*
8 *section (a)(1)(B), comply with the provisions of*
9 *sections 23A and 23B of the Federal Reserve Act*
10 *in the same manner and to the same extent as*
11 *such transactions would be required to comply*
12 *with such sections if the bank were a member*
13 *bank.*

14 “(3) *TREATMENT AS A WHOLESALE FINANCIAL*
15 *INSTITUTION.*—*Any foreign bank which is, or is affili-*
16 *ated with a company which is, treated as an invest-*
17 *ment bank holding company under this subsection*
18 *shall be treated as a wholesale financial institution*
19 *for purposes of clauses (iii) and (iv) of subsection*
20 *(a)(1)(B), subsection (a)(2)(B)(ii), and section 5(g),*
21 *except that the Board may adopt such modifications,*
22 *conditions, or exemptions as the Board deems appro-*
23 *priate, giving due regard to the principle of national*
24 *treatment and equality of competitive opportunity.*

1 “(4) *NONAPPLICABILITY OF OTHER EXEMP-*
 2 *TION.*—Any foreign bank or company which is treated
 3 as an investment bank holding company under this
 4 subsection shall not be eligible for any exemption de-
 5 scribed in section 2(h).

6 “(c) *ELIGIBILITY OF FOREIGN BANKS FOR CERTAIN*
 7 *TREATMENT.*—

8 “(1) *RECIPROCAL NATIONAL TREATMENT.*—

9 “(A) *IN GENERAL.*—A foreign bank that op-
 10 erates a branch, agency or commercial lending
 11 company in the United States, and any com-
 12 pany that owns or controls such a foreign bank,
 13 shall be eligible for the treatment afforded under
 14 subsection (b) or section 11(n) only if the home
 15 country of such foreign bank or company accords
 16 to United States banks the same competitive op-
 17 portunities in banking as such country accords
 18 to domestic banks of such country.

19 “(B) *COORDINATION WITH NAFTA.*—Sub-
 20 paragraph (A) shall not apply in derogation of
 21 any obligation under the North American Free
 22 Trade Agreement.

23 “(C) *HOME COUNTRY DEFINED.*—For pur-
 24 poses of subparagraph (A), the term ‘home coun-
 25 try’ means, with respect to any foreign bank or

1 company referred to in subparagraph (A), the
2 country under the laws of which the foreign bank
3 or company is organized.

4 “(2) *PREVENTION OF EVASION.*—No foreign bank
5 or bank owned by a former United States national
6 may operate a branch or agency in the United States
7 if the predominance of the assets of such bank were
8 acquired in connection with a merger with, or pur-
9 chase or assumption of all or substantially all the as-
10 sets of, a wholesale financial institution.

11 “(d) *RULE FOR FINANCIAL SERVICES HOLDING COM-*
12 *PANIES.*—For purposes of section 5(g)(2)(A)(ii), any for-
13 *eign bank (as defined in section 1(b) of the International*
14 *Banking Act of 1978) which is directly or indirectly owned,*
15 *controlled, or operated by a company that—*

16 “(1) *as of January 1, 1995, was registered as a*
17 *bank holding company; or*

18 “(2) *is a successor to any such bank holding*
19 *company,*
20 *shall be treated as a wholesale financial institution.”.*

21 (c) *CONFORMING AMENDMENTS.*—

22 (1) *EXCEPTION TO DEPOSIT INSURANCE RE-*
23 *QUIREMENT.*—Section 3(e) of the Bank Holding Com-
24 *pany Act of 1956 (12 U.S.C. 1842(e)) is amended by*
25 *adding at the end the following: “This subsection shall*

1 *not apply to a wholesale financial institution that is*
 2 *controlled by an investment bank holding company*
 3 *that controls no banks other than wholesale financial*
 4 *institutions.”.*

5 (2) *APPROPRIATE FEDERAL BANKING AGENCY.—*
 6 *Section 3(q)(2)(A) of the Federal Deposit Insurance*
 7 *Act (12 U.S.C. 1813(q)(2)(A)) is amended to read as*
 8 *follows:*

9 “(A) *any State member insured bank (ex-*
 10 *cept a District bank) and wholesale financial in-*
 11 *stitution as authorized pursuant to section 9B of*
 12 *the Federal Reserve Act;”.*

13 ***SEC. 117. WHOLESALE FINANCIAL INSTITUTIONS.***

14 (a) *IN GENERAL.—The Federal Reserve Act (12 U.S.C.*
 15 *221 et seq.) is amended by inserting after section 9A the*
 16 *following new section:*

17 ***“SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.***

18 “(a) *APPLICATION FOR MEMBERSHIP AS WHOLESALE*
 19 *FINANCIAL INSTITUTION.—*

20 “(1) *APPLICATION REQUIRED.—*

21 “(A) *IN GENERAL.—Any bank incorporated*
 22 *by special law of any State, or organized under*
 23 *the general laws of any State, may apply to the*
 24 *Board of Governors of the Federal Reserve Sys-*
 25 *tem to become a wholesale financial institution*

1 *and to subscribe to the stock of the Federal re-*
2 *serve bank organized within the district where*
3 *the applying bank is located.*

4 “(B) *TREATMENT AS STATE MEMBER*
5 *BANK.—Any application under subparagraph*
6 *(A) shall be treated as an application to become*
7 *a State member bank under, and shall be subject*
8 *to the provisions of, section 9.*

9 “(2) *INSURANCE TERMINATION.—No bank that is*
10 *insured under the Federal Deposit Insurance Act may*
11 *become a wholesale financial institution unless it has*
12 *met all requirements under that Act for voluntary ter-*
13 *mination of deposit insurance.*

14 “(b) *GENERAL REQUIREMENTS APPLICABLE TO*
15 *WHOLESALE FINANCIAL INSTITUTIONS.—*

16 “(1) *FEDERAL RESERVE ACT.—Except as other-*
17 *wise provided in this section, wholesale financial in-*
18 *stitutions shall be member banks and shall be subject*
19 *to the provisions of this Act that apply to member*
20 *banks to the same extent and in the same manner as*
21 *State member insured banks, except that a wholesale*
22 *financial institution may terminate membership*
23 *under this Act only with the prior written approval*
24 *of the Board and on terms and conditions that the*

1 *Board determines are appropriate to carry out the*
2 *purposes of this Act.*

3 “(2) *PROMPT CORRECTIVE ACTION.*—A wholesale
4 *financial institution shall be deemed to be an insured*
5 *depository institution for purposes of section 38 of the*
6 *Federal Deposit Insurance Act except that—*

7 “(A) *the relevant capital levels and capital*
8 *measures for each capital category shall be the*
9 *levels specified by the Board for wholesale finan-*
10 *cial institutions in accordance with subsection*
11 *(c);*

12 “(B) *the provisions applicable to well cap-*
13 *italized insured depository institutions shall be*
14 *inapplicable to wholesale financial institutions;*

15 “(C) *the provisions authorizing or requiring*
16 *an institution to be placed into receivership shall*
17 *not apply to a wholesale financial institution,*
18 *and, instead, the Board is authorized or re-*
19 *quired, as the case may be, to terminate the*
20 *wholesale financial institution’s membership in*
21 *the Federal Reserve System or place the bank*
22 *into conservatorship; and*

23 “(D) *for purposes of applying the provi-*
24 *sions of section 38 of the Federal Deposit Insur-*
25 *ance Act to wholesale financial institutions, all*

1 *references to the appropriate Federal banking*
2 *agency or to the Corporation in that section*
3 *shall be deemed to be references to the Board.*

4 “(3) *ENFORCEMENT AUTHORITY.*—Subsections
5 *(j) and (k) of section 7, subsections (b) through (n),*
6 *(s), (u), and (v) of section 8, and section 19 of the*
7 *Federal Deposit Insurance Act shall apply to a whole-*
8 *sale financial institution in the same manner and to*
9 *the same extent as such provisions apply to State*
10 *member insured banks and any reference in such sec-*
11 *tions to an insured depository institution shall be*
12 *deemed, for purposes of this paragraph, to be a ref-*
13 *erence to a wholesale financial institution.*

14 “(4) *CERTAIN OTHER STATUTES APPLICABLE.*—
15 *A wholesale financial institution shall be deemed to*
16 *be a banking institution, and the Board shall be the*
17 *appropriate Federal banking agency for such bank*
18 *and all such bank’s affiliates, for purposes of the*
19 *International Lending Supervision Act.*

20 “(5) *BANK MERGER ACT.*—A wholesale financial
21 *institution shall be subject to the provisions of sec-*
22 *tions 18(c) and 44 of the Federal Deposit Insurance*
23 *Act in the same manner and to the same extent the*
24 *wholesale financial institution would be subject to*

1 *such sections if the institution were a State member*
 2 *insured bank.*

3 “(c) *SPECIFIC REQUIREMENTS APPLICABLE TO*
 4 *WHOLESALE FINANCIAL INSTITUTIONS.—*

5 “(1) *LIMITATIONS ON DEPOSITS.—*

6 “(A) *MINIMUM AMOUNT.—*

7 “(i) *IN GENERAL.—Pursuant to such*
 8 *regulations as the Board may prescribe, no*
 9 *wholesale financial institution may receive*
 10 *initial deposits of \$100,000 or less, other*
 11 *than on an incidental and occasional basis.*

12 “(ii) *LIMITATION ON DEPOSITS OF*
 13 *LESS THAN \$100,000.—No bank may be*
 14 *treated as a wholesale financial institution*
 15 *if the total amount of the initial deposits of*
 16 *\$100,000 or less at such bank constitute*
 17 *more than 5 percent of the bank’s total de-*
 18 *posits.*

19 “(B) *NO DEPOSIT INSURANCE.—No deposits*
 20 *held by a wholesale financial institution shall be*
 21 *insured deposits under the Federal Deposit In-*
 22 *surance Act.*

23 “(C) *ADVERTISING AND DISCLOSURE.—The*
 24 *Board shall prescribe regulations pertaining to*
 25 *advertising and disclosure by wholesale financial*

1 *institutions to ensure that each depositor is noti-*
2 *fied that deposits at the wholesale financial in-*
3 *stitution are not federally insured or otherwise*
4 *guaranteed by the United States Government.*

5 “(2) *SPECIAL CAPITAL REQUIREMENTS APPLICA-*
6 *BLE TO WHOLESALE FINANCIAL INSTITUTIONS.—*

7 “(A) *MINIMUM CAPITAL LEVELS.—*

8 “(i) *IN GENERAL.—The Board shall,*
9 *by regulation, adopt capital requirements*
10 *for wholesale financial institutions—*

11 “(I) *to account for the status of*
12 *wholesale financial institutions as in-*
13 *stitutions that accept deposits that are*
14 *not insured under the Federal Deposit*
15 *Insurance Act; and*

16 “(II) *to provide for the safe and*
17 *sound operation of the wholesale finan-*
18 *cial institution without undue risk to*
19 *creditors or other persons, including*
20 *Federal reserve banks, engaged in*
21 *transactions with the bank.*

22 “(ii) *MINIMUM LEVERAGE RATIO.—The*
23 *minimum leverage ratio of tier one capital*
24 *to total assets of wholesale financial institu-*
25 *tions shall be not less than the level required*

1 *for a State member insured bank to be well*
2 *capitalized unless the Board determines oth-*
3 *erwise, consistent with safety and sound-*
4 *ness.*

5 “(B) *CAPITAL CATEGORIES FOR PROMPT*
6 *CORRECTIVE ACTION.—For purposes of applying*
7 *section 38 of the Federal Deposit Insurance Act*
8 *with respect to any wholesale financial institu-*
9 *tion, the Board shall, by regulation, establish, for*
10 *each relevant capital measure specified by the*
11 *Board under subparagraph (A), the levels at*
12 *which a wholesale financial institution is well*
13 *capitalized, adequately capitalized,*
14 *undercapitalized, significantly undercapitalized,*
15 *and critically undercapitalized.*

16 “(3) *ADDITIONAL REQUIREMENTS APPLICABLE*
17 *TO WHOLESALE FINANCIAL INSTITUTIONS.—In addi-*
18 *tion to any requirement otherwise applicable to State*
19 *member banks or applicable, under this section, to*
20 *wholesale financial institutions, the Board may pre-*
21 *scribe, by regulation or order, for wholesale financial*
22 *institutions—*

23 “(A) *limitations on transactions with affili-*
24 *ates to prevent an affiliate from gaining access*
25 *to, or the benefits of, credit from a Federal re-*

1 *serve bank, including overdrafts at a Federal re-*
2 *serve bank;*

3 *“(B) special clearing balance requirements;*
4 *and*

5 *“(C) any additional requirements that the*
6 *Board determines to be appropriate or necessary*
7 *to—*

8 *“(i) promote the safety and soundness*
9 *of the wholesale financial institution, or*

10 *“(ii) protect creditors and other per-*
11 *sons, including Federal reserve banks, en-*
12 *gaged in transactions with the wholesale fi-*
13 *nancial institution.*

14 *“(4) EXEMPTIONS FOR WHOLESale FINANCIAL*
15 *INSTITUTIONS.—The Board may, by regulation or*
16 *order, exempt any wholesale financial institution*
17 *from any provision applicable to a State member*
18 *bank that is not a wholesale financial institution, if*
19 *the Board finds that such exemption is not inconsis-*
20 *ent with—*

21 *“(A) the promotion of the safety and sound-*
22 *ness of the wholesale financial institution; and*

23 *“(B) the protection of creditors and other*
24 *persons, including Federal reserve banks, en-*

1 *gaged in transactions with the wholesale finan-*
2 *cial institution.*

3 “(5) *NO EFFECT ON OTHER PROVISIONS.*—*This*
4 *section shall not be construed as limiting the Board’s*
5 *authority over member banks under any other provi-*
6 *sion of law, or to create any obligation for any Fed-*
7 *eral reserve bank to make, increase, renew, or extend*
8 *any advances or discount under this Act to any mem-*
9 *ber bank or other depository institution.*

10 “(d) *CONSERVATORSHIP AUTHORITY.*—

11 “(1) *IN GENERAL.*—*The Board may appoint a*
12 *conservator to take possession and control of a whole-*
13 *sale financial institution to the same extent and in*
14 *the same manner as the Comptroller of the Currency*
15 *may appoint a conservator for a national bank under*
16 *section 203 of the Bank Conservation Act, and the*
17 *conservator shall exercise the same powers, functions,*
18 *and duties, subject to the same limitations, as are*
19 *provided under such Act for conservators of national*
20 *banks.*

21 “(2) *BOARD AUTHORITY.*—*The Board shall have*
22 *the same authority with respect to any conservator*
23 *appointed under paragraph (1) and the wholesale fi-*
24 *nancial institution for which such conservator has*
25 *been appointed as the Comptroller of the Currency*

1 *has under the Bank Conservation Act with respect to*
2 *a conservator appointed under such Act and a na-*
3 *tional bank for which the conservator has been ap-*
4 *pointed.*

5 “(e) *DEFINITIONS.*—*For purposes of this section, the*
6 *following definitions shall apply:*

7 “(1) *WHOLESALE FINANCIAL INSTITUTION.*—*The*
8 *term ‘wholesale financial institution’ means a bank*
9 *whose application to become a wholesale financial in-*
10 *stitution and a State member bank has been approved*
11 *by the Board under this section.*

12 “(2) *DEPOSIT.*—*The term ‘deposit’ has the*
13 *meaning given to such term by the Board under this*
14 *Act.*

15 “(3) *STATE MEMBER INSURED BANK.*—*The term*
16 *‘State member insured bank’ means a State member*
17 *bank which is an insured bank (as defined in section*
18 *3(h) of the Federal Deposit Insurance Act).*

19 “(f) *EXCLUSIVE JURISDICTION.*—*Subsections (c) and*
20 *(e) of section 43 of the Federal Deposit Insurance Act shall*
21 *not apply to any wholesale financial institution.”.*

22 (b) *VOLUNTARY TERMINATION OF INSURED STATUS BY*
23 *CERTAIN INSTITUTIONS.*—

1 (1) *SECTION 8 DESIGNATIONS.*—Section 8(a) of
 2 the Federal Deposit Insurance Act (12 U.S.C.
 3 1818(a)) is amended—

4 (A) by striking paragraph (1); and

5 (B) by redesignating paragraphs (2)
 6 through (9) as paragraphs (1) through (8), re-
 7 spectively.

8 (2) *VOLUNTARY TERMINATION OF INSURED STA-*
 9 *TUS.*—The Federal Deposit Insurance Act (12 U.S.C.
 10 1811 *et seq.*) is amended by inserting after section 8
 11 the following new section:

12 **“SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS IN-**
 13 **SURED DEPOSITORY INSTITUTION.**

14 “(a) *IN GENERAL.*—Except as provided in subsection
 15 (b), an insured State bank or a national bank may volun-
 16 tarily terminate such bank’s status as an insured depository
 17 institution in accordance with regulations of the Corpora-
 18 tion if—

19 “(1) the bank provides written notice of the
 20 bank’s intent to terminate such insured status—

21 “(A) to the Corporation and the Board of
 22 Governors of the Federal Reserve System not less
 23 than 6 months before the effective date of such
 24 termination; and

1 “(B) to all depositors at such bank, not less
2 than 6 months before the effective date of the ter-
3 mination of such status; and

4 “(2) either—

5 “(A) the deposit insurance fund of which
6 such bank is a member equals or exceeds the
7 fund’s designated reserve ratio as of the date the
8 bank provides a written notice under paragraph
9 (1) and the Corporation determines that the fund
10 will equal or exceed the applicable designated re-
11 serve ratio for the 2 semiannual assessment peri-
12 ods immediately following such date; or

13 “(B) the Corporation and the Board of Gov-
14 ernors of the Federal Reserve System approve the
15 termination of the bank’s insured status and the
16 bank pays an exit fee in accordance with sub-
17 section (e).

18 “(b) *EXCEPTION.*—Subsection (a) shall not apply with
19 respect to—

20 “(1) an insured savings association;

21 “(2) an insured branch that is required to be in-
22 sured under subsection (a) or (b) of section 6 of the
23 International Banking Act of 1978; or

24 “(3) any institution described in section 2(c)(2)
25 of the Bank Holding Company Act of 1956.

1 “(c) *ELIGIBILITY FOR INSURANCE TERMINATED.*—
2 Any bank that voluntarily elects to terminate the bank’s
3 insured status under subsection (a) shall not be eligible for
4 insurance on any deposits or any assistance authorized
5 under this Act after the period specified in subsection (f)(1).

6 “(d) *INSTITUTION MUST BECOME WHOLESALE FINAN-*
7 *CIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING AC-*
8 *TIVITIES.*—Any depository institution which voluntarily
9 terminates such institution’s status as an insured deposi-
10 tory institution under this section may not, upon termi-
11 nation of insurance, accept any deposits unless the institu-
12 tion is a wholesale financial institution under section 9B
13 of the Federal Reserve Act.

14 “(e) *EXIT FEES.*—

15 “(1) *IN GENERAL.*—Any bank that voluntarily
16 terminates such bank’s status as an insured deposi-
17 tory institution under this section shall pay an exit
18 fee in an amount that the Corporation determines is
19 sufficient to account for the institution’s pro rata
20 share of the amount (if any) which would be required
21 to restore the relevant deposit insurance fund to the
22 fund’s designated reserve ratio as of the date the bank
23 provides a written notice under subsection (a)(1).

1 “(2) *PROCEDURES.*—*The Corporation shall pre-*
 2 *scribe, by regulation, procedures for assessing any exit*
 3 *fee under this subsection.*

4 “(f) *TEMPORARY INSURANCE OF DEPOSITS INSURED*
 5 *AS OF TERMINATION.*—

6 “(1) *TRANSITION PERIOD.*—*The insured deposits*
 7 *of each depositor in a State bank or a national bank*
 8 *on the effective date of the voluntary termination of*
 9 *the bank’s insured status, less all subsequent with-*
 10 *drawals from any deposits of such depositor, shall*
 11 *continue to be insured for a period of not less than*
 12 *6 months and not more than 2 years, as determined*
 13 *by the Corporation. During such period, no additions*
 14 *to any such deposits, and no new deposits in the de-*
 15 *pository institution made after the effective date of*
 16 *such termination shall be insured by the Corporation.*

17 “(2) *TEMPORARY ASSESSMENTS; OBLIGATIONS*
 18 *AND DUTIES.*—*During the period specified in para-*
 19 *graph (1) with respect to any bank, the bank shall*
 20 *continue to pay assessments under section 7 as if the*
 21 *bank were an insured depository institution. The*
 22 *bank shall, in all other respects, be subject to the au-*
 23 *thority of the Corporation and the duties and obliga-*
 24 *tions of an insured depository institution under this*
 25 *Act during such period, and in the event that the*

1 *bank is closed due to an inability to meet the de-*
2 *mands of the bank's depositors during such period,*
3 *the Corporation shall have the same powers and*
4 *rights with respect to such bank as in the case of an*
5 *insured depository institution.*

6 “(g) *ADVERTISEMENTS.*—

7 “(1) *IN GENERAL.*—A bank that voluntarily ter-
8 *minates the bank's insured status under this section*
9 *shall not advertise or hold itself out as having insured*
10 *deposits, except that the bank may advertise the tem-*
11 *porary insurance of deposits under subsection (f) if,*
12 *in connection with any such advertisement, the adver-*
13 *tisement also states with equal prominence that addi-*
14 *tions to deposits and new deposits made after the ef-*
15 *fective date of the termination are not insured.*

16 “(2) *CERTIFICATES OF DEPOSIT, OBLIGATIONS,*
17 *AND SECURITIES.*—Any certificate of deposit or other
18 *obligation or security issued by a State bank or a na-*
19 *tional bank after the effective date of the voluntary*
20 *termination of the bank's insured status under this*
21 *section shall be accompanied by a conspicuous,*
22 *prominently displayed notice that such certificate of*
23 *deposit or other obligation or security is not insured*
24 *under this Act.*

25 “(h) *NOTICE REQUIREMENTS.*—

1 “(1) *NOTICE TO THE CORPORATION.*—The notice
2 required under subsection (a)(1)(A) shall be in such
3 form as the Corporation may require.

4 “(2) *NOTICE TO DEPOSITORS.*—The notice re-
5 quired under subsection (a)(1)(B) shall be—

6 “(A) sent to each depositor’s last address of
7 record with the bank; and

8 “(B) in such manner and form as the Cor-
9 poration finds to be necessary and appropriate
10 for the protection of depositors.”.

11 (3) *DEFINITION.*—Section 19(b)(1)(A)(i) of the
12 Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is
13 amended after “such Act” by inserting “, or any
14 wholesale financial institution as defined in section
15 9B of this Act”.

16 (c) *REPORTS ON DISCOUNTS AND ADVANCES TO*
17 *WHOLESALE FINANCIAL INSTITUTIONS.*—Section 10B of
18 the Federal Reserve Act (12 U.S.C. 347(b)) is amended by
19 adding at the end the following new subsection:

20 “(c) *REPORTS ON DISCOUNTS AND ADVANCES TO*
21 *WHOLESALE FINANCIAL INSTITUTIONS.*—

22 “(1) *IN GENERAL.*—The Board shall submit a re-
23 port to the Congress at the end of any year in which
24 any wholesale financial institution has obtained a

1 *discount, advance, or other extension of credit from a*
 2 *Federal reserve bank.*

3 “(2) *CONTENTS.*—Any report submitted under
 4 *paragraph (1) shall explain the circumstances and*
 5 *need for any discount, advance, or other extension of*
 6 *credit to a wholesale financial institution during the*
 7 *period covered by the report, including the type and*
 8 *amount of credit extended and the amount of credit*
 9 *remaining outstanding as of the date of the report.”.*

10 ***Subtitle C—Financial Activities***

11 ***SEC. 121. FINANCIAL ACTIVITIES.***

12 *Section 4(c)(8) of the Bank Holding Company Act of*
 13 *1956 (12 U.S.C. 1843(c)(8)) is amended—*

14 *(1) by striking “shares of any company” and all*
 15 *that follows through “for a bank holding company to*
 16 *provide” and inserting “shares of any company the*
 17 *activities of which the Board after due notice has de-*
 18 *termined (by order, regulation, or advisory opinion)*
 19 *to be financial in nature or incidental to such finan-*
 20 *cial activities. In determining whether an activity is*
 21 *financial in nature or incidental to financial activi-*
 22 *ties, the Board shall take into account changes or rea-*
 23 *sonably expected changes in the marketplace in which*
 24 *financial services holding companies compete as well*
 25 *as changes or reasonably expected changes in the tech-*

1 *nology by which these services are delivered. In addi-*
2 *tion, the Board shall take into account activities con-*
3 *sidered financial activities or banking or financial*
4 *operations for purposes of the regulation of the Board*
5 *designated as 'Regulation K' (12 C.F.R. 211.23*
6 *(f)(5)(iii)(B)) as in effect on the date of the enactment*
7 *of the Financial Services Competitiveness Act of 1995.*
8 *Any activity that the Board has determined, by order*
9 *or regulation that is in effect on such date to be so*
10 *closely related to banking or managing or controlling*
11 *banks as to be a proper incident thereto shall be*
12 *deemed to be of a financial nature for purposes of this*
13 *paragraph without further action by the Board (sub-*
14 *ject to the same terms and conditions contained in*
15 *such order or regulation, unless modified by the*
16 *Board), but for purposes of this subsection it shall not*
17 *be closely related to banking or managing or control-*
18 *ling banks or financial in nature or incidental to a*
19 *financial activity for a financial services holding*
20 *company to provide”;*

21 *(2) in the 3d sentence, by inserting “and between*
22 *activities commenced by affiliates of different classes*
23 *of banks” before the period at the end; and*

24 *(3) by striking the 2d sentence.*

1 **SEC. 122. NO PRIOR APPROVAL REQUIRED FOR WELL CAP-**
2 **ITALIZED AND WELL MANAGED FINANCIAL**
3 **SERVICES HOLDING COMPANIES.**

4 *Section 4(j) of the Bank Holding Company Act of 1956*
5 *(12 U.S.C. 1843(j)) is amended—*

6 *(1) in paragraph (1), by striking “No” and in-*
7 *serting “Except as provided in paragraph (3) or sec-*
8 *tion 10(b)(3), no”; and*

9 *(2) by adding at the end the following new para-*
10 *graphs:*

11 *“(3) NO NOTICE REQUIRED FOR CERTAIN TRANS-*
12 *ACTIONS.—Notwithstanding paragraph (1), no notice*
13 *under subsection (c)(8) or (a)(2)(B) is required for a*
14 *proposal by a financial services holding company to*
15 *engage in any activity (other than an activity de-*
16 *scribed in subparagraph (A) or (B) of section*
17 *10(a)(1)) or acquire or retain the shares or assets of*
18 *any company (other than a securities affiliate) if the*
19 *proposal qualifies under paragraph (4).*

20 *“(4) CRITERIA FOR STATUTORY APPROVAL.—A*
21 *proposal qualifies under this paragraph if all of the*
22 *following criteria are met:*

23 *“(A) FINANCIAL CRITERIA.—Both before*
24 *and immediately after the proposed trans-*
25 *action—*

1 “(i) the acquiring financial services
2 holding company is well capitalized;

3 “(ii) the lead depository institution of
4 such holding company is well capitalized;

5 “(iii) well capitalized depository insti-
6 tutions control at least 80 percent of the ag-
7 gregate total risk-weighted assets of deposi-
8 tory institutions controlled by such holding
9 company; and

10 “(iv) no depository institution con-
11 trolled by such holding company is
12 undercapitalized.

13 “(B) *MANAGERIAL CRITERIA.*—

14 “(i) *WELL MANAGED.*—At the time of
15 the transaction, the acquiring financial
16 services holding company, the lead deposi-
17 tory institution of such holding company,
18 and depository institutions that control at
19 least 80 percent of the aggregate total risk-
20 weighted assets of depository institutions
21 controlled by such holding company are well
22 managed.

23 “(ii) *LIMITATION ON POORLY MANAGED*
24 *INSTITUTIONS.*—No depository institution
25 which is controlled by the acquiring finan-

1 *cial services holding company has received*
2 *any of the lowest 2 composite ratings at the*
3 *later of the institution's most recent exam-*
4 *ination or subsequent review.*

5 “(iii) *RECENTLY ACQUIRED INSTITU-*
6 *TIONS.—Depository institutions acquired by*
7 *the financial services holding company dur-*
8 *ing the 12-month period ending on the date*
9 *of the proposed transaction may be excluded*
10 *for purposes of clause (ii) if—*

11 “(I) *the financial services holding*
12 *company has developed a plan accept-*
13 *able to the appropriate Federal bank-*
14 *ing agency for the institution to restore*
15 *the capital and management of the in-*
16 *stitution; and*

17 “(II) *all such depository institu-*
18 *tions represent, in the aggregate, less*
19 *than 25 percent of the total risk-*
20 *weighted assets of all depository insti-*
21 *tutions controlled by the financial serv-*
22 *ices holding company.*

23 “(C) *ACTIVITIES PERMISSIBLE.—Following*
24 *consummation of the proposed transaction, the*

1 *financial services holding company engages di-*
2 *rectly or through a subsidiary solely in—*

3 *“(i) activities that are permissible*
4 *under subsection (c)(8), as determined by*
5 *the Board by any regulation, order, or advi-*
6 *sory opinion under such subsection that is*
7 *in effect at the time of the proposed trans-*
8 *action, subject to all of the restrictions,*
9 *terms, and conditions of such subsection*
10 *and such regulation, order, or advisory*
11 *opinion; and*

12 *“(ii) such other activities as are other-*
13 *wise permissible under this Act, subject to*
14 *the restrictions, terms and conditions, in-*
15 *cluding any prior notice or approval re-*
16 *quirements, provided in this Act.*

17 *“(D) SIZE OF ACQUISITION.—*

18 *“(i) ASSET SIZE.—The book value of*
19 *the total risk-weighted assets acquired does*
20 *not exceed 10 percent of the consolidated*
21 *total risk-weighted assets of the acquiring fi-*
22 *nancial services holding company.*

23 *“(ii) CONSIDERATION.—The gross con-*
24 *sideration to be paid for the securities or*
25 *assets does not exceed 15 percent of the con-*

1 *solidated tier 1 capital of the acquiring fi-*
2 *ancial services holding company.*

3 “(E) NOTICE NOT OTHERWISE WAR-
4 *RANTED.—For proposals described in paragraph*
5 *(5)(B), the Board has not, before the conclusion*
6 *of the period described in such paragraph, ad-*
7 *vised the financial services holding company that*
8 *a notice under paragraph (1) is required.*

9 “(5) NOTIFICATION.—

10 “(A) COMMENCEMENT OF ACTIVITIES AP-
11 *PROVED BY RULE.—A financial services holding*
12 *company that qualifies under paragraph (4) and*
13 *proposes to engage de novo, directly or through*
14 *a subsidiary, in any activity that is permissible*
15 *under subsection (c)(8), as determined by the*
16 *Board by regulation, may commence that activ-*
17 *ity without prior notice to the Board.*

18 “(B) SUBSEQUENT NOTICE.—A financial
19 *services holding company that commences an ac-*
20 *tivity under subsection (c)(8) without prior no-*
21 *tice to the Board shall provide written notice to*
22 *the Board no later than 10 business days after*
23 *commencing the activity.*

24 “(C) ACTIVITIES PERMITTED BY ORDER AND
25 *ACQUISITIONS.—*

1 “(i) *IN GENERAL.*—At least 12 business
2 days prior to commencing any activity
3 (other than an activity described in sub-
4 paragraph (A)) or acquiring shares or as-
5 sets of any company in a proposal that
6 qualifies under paragraph (4), the financial
7 services holding company shall provide
8 written notice to the Board of the proposal,
9 unless the Board determines that no notice
10 or a shorter notice period is appropriate.

11 “(ii) *DESCRIPTION OF PROPOSED AC-*
12 *TIVITIES.*—A notice under clause (i) shall
13 include a description of the proposed activi-
14 ties and the terms of any proposed acquisi-
15 tion.

16 “(6) *ADJUSTMENT OF AMOUNTS.*—The Board
17 may, by regulation, adjust the amounts and the man-
18 ner in which the percentage of depository institutions
19 is calculated under subparagraph (B)(i), (B)(iii)(II),
20 or (D) of paragraph (4) if the Board determines that
21 any such adjustment is consistent with safety and
22 soundness and the purposes of this Act.

23 “(7) *EXPEDITED PROCEDURE FOR NEW ACTIVI-*
24 *TIES.*—

1 “(A) *EXPEDITED PREACQUISITION RE-*
2 *VIEW.*—After the end of the 12-day period re-
3 *ferred to in paragraph (5)(C) and subject to any*
4 *final ruling under subparagraph (B), a financial*
5 *services holding company may acquire a com-*
6 *pany engaged in activities that the company be-*
7 *lieves are financial in nature for purposes of*
8 *subsection (c)(8) and that the Board has not pre-*
9 *viously reviewed under such subsection if—*

10 “(i) *the proposal qualifies under all of*
11 *the criteria in paragraph (4) other than*
12 *paragraph (4)(C);*

13 “(ii) *the financial services holding*
14 *company provides the notice required under*
15 *paragraph (5)(C), and includes with such*
16 *notice an explanation of the facts and cir-*
17 *cumstances that provide a reasonable basis*
18 *for concluding that the proposed activities*
19 *are financial in nature or incidental to*
20 *such financial activities; and*

21 “(iii) *before the end of such 12-day pe-*
22 *riod, the Board has not—*

23 “(I) *required a notice under para-*
24 *graph (1) with respect to the proposed*
25 *transaction; or*

1 “(II) advised the financial serv-
2 ices holding company that the com-
3 pany has failed to provide a reasonable
4 basis for concluding that the proposed
5 activities are financial in nature or
6 incidental to such financial activities.

7 “(B) POSTACQUISITION REVIEW.—

8 “(i) NOTICE PROCEDURE.—A financial
9 services holding company which is per-
10 mitted to make an acquisition under this
11 paragraph shall file a notice with the Board
12 in accordance with paragraph (1) before the
13 end of the 30-day period beginning on the
14 date of the consummation of the acquisition.

15 “(ii) LIMITED REVIEW.—The Board’s
16 review of a postconsummation notice re-
17 quired under this subparagraph shall be
18 limited to determining whether the proposed
19 activities are permissible under subsection
20 (c)(8), including whether the proposal meets
21 the criteria in paragraph (2)(A).

22 “(iii) CONDITIONAL ACTION.—No pro-
23 vision of this paragraph shall be construed
24 as limiting in any way the authority of the
25 Board under this section to impose condi-

tions on the conduct of any activity or the ownership of any company.

“(iv) *DIVESTITURE OF IMPERMISSIBLE ACTIVITIES.*—If the Board determines that any proposed activity is not permissible under subsection (c)(8), the financial services holding company shall terminate the activity or divest the company acquired in reliance on this paragraph before the end of the 2-year period beginning on the date of such determination.

“(C) *INITIAL DECISION NOT PREJUDICIAL TO SUBSEQUENT DETERMINATION.*—A decision by the Board under subparagraph (A) not to require a notice under paragraph (1) during the 12-day period referred to in such subparagraph shall not prejudice the Board’s decision under subparagraph (B).”.

SEC. 123. STREAMLINED EXAMINATION AND REPORTING REQUIREMENTS FOR ALL FINANCIAL SERVICES HOLDING COMPANIES.

Section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)) is amended to read as follows—

“(c) *REPORTS AND EXAMINATIONS.*—

“(1) *PURPOSES.*—

1 “(A) *IN GENERAL.*—The purpose of this
2 subsection is to authorize the Board, through re-
3 ports and examinations, to gather information
4 from a financial services holding company and
5 the subsidiaries of any such holding company re-
6 garding the structure, activities, and financial
7 condition of the financial services holding com-
8 pany and such subsidiaries so that the Board
9 can monitor risks within the holding company
10 system that could adversely affect any depository
11 institution subsidiary of the holding company
12 and may monitor and enforce compliance with
13 this Act.

14 “(B) *PURPOSE NOT TO IMPOSE ADDITIONAL*
15 *BURDENS ON HOLDING COMPANIES.*—It is the in-
16 tended purpose of this subsection that the Board
17 shall—

18 “(i) exercise the Board’s authority to
19 collect information under this section in a
20 manner that is the least burdensome to fi-
21 nancial services holding companies and the
22 subsidiaries of such companies; and

23 “(ii) rely, to the fullest extent possible,
24 on reports prepared for and examinations

1 *conducted by or for other Federal and State*
2 *supervisors.*

3 “(C) *PURPOSE TO REQUIRE CAREFULLY*
4 *TAILORED EXAMINATIONS.—It is the intended*
5 *purpose of this subsection that the Board shall*
6 *tailor the focus and scope of any examination*
7 *under this section to a financial services holding*
8 *company or to any subsidiary of such company*
9 *which, because of financial conditions, activities,*
10 *operations of such subsidiary, the transactions*
11 *between such subsidiary and other affiliates, or*
12 *the size of any such subsidiary poses a potential*
13 *material risk to a depository institution subsidi-*
14 *ary of such holding company.*

15 “(2) *REPORTS.—*

16 “(A) *IN GENERAL.—The Board from time to*
17 *time may require any financial services holding*
18 *company and any subsidiary of such company*
19 *to submit reports under oath to keep the Board*
20 *informed as to—*

21 “(i) *the company’s or the subsidiary’s*
22 *activities, financial condition, policies, sys-*
23 *tems for monitoring and controlling finan-*
24 *cial and operational risks, and transactions*

1 *with depository institution subsidiaries of*
2 *the holding company; and*

3 “(ii) *the extent to which the company*
4 *or subsidiary has complied with the provi-*
5 *sions of this Act and regulations prescribed*
6 *and orders issued under this Act.*

7 “(B) *USE OF EXISTING REPORTS.—*

8 “(i) *IN GENERAL.—The Board shall, to*
9 *the fullest extent possible, accept reports in*
10 *fulfillment of the Board’s reporting require-*
11 *ments under this paragraph that a finan-*
12 *cial services holding company or any sub-*
13 *sidary of such company has been required*
14 *to provide to other Federal and State super-*
15 *visors or to appropriate self-regulatory or-*
16 *ganizations.*

17 “(ii) *AVAILABILITY.—A financial serv-*
18 *ices holding company or a subsidiary of*
19 *such company shall provide to the Board, at*
20 *the request of the Board, a report referred to*
21 *in clause (i).*

22 “(3) *EXAMINATIONS.—*

23 “(A) *LIMITED USE OF EXAMINATION AU-*
24 *THORITY.—The Board may make examinations*

1 *of each financial services holding company and*
2 *each subsidiary of such company in order to—*

3 “(i) *inform the Board of the nature of*
4 *the operations and financial condition of*
5 *the financial services holding company and*
6 *such subsidiaries;*

7 “(ii) *inform the Board of the—*

8 “(I) *financial and operational*
9 *risks within the financial services hold-*
10 *ing company system that may affect*
11 *any depository institution owned by*
12 *such holding company; and*

13 “(II) *the systems of the holding*
14 *company and such subsidiaries for*
15 *monitoring and controlling those risks;*
16 *and*

17 “(iii) *monitor compliance with the*
18 *provisions of this Act and those governing*
19 *transactions and relationships between any*
20 *depository institution controlled by a finan-*
21 *cial services holding company and any of*
22 *the company’s other subsidiaries.*

23 “(B) *RESTRICTED FOCUS OF EXAMINA-*
24 *TIONS.—The Board shall, to the fullest extent*
25 *possible, limit the focus and scope of any exam-*

1 *ination of a financial services holding company*
2 *to—*

3 *“(i) the holding company; and*

4 *“(ii) to any subsidiary (other than a*
5 *depository institution subsidiary) of the*
6 *holding company which, because of the size,*
7 *condition, or activities of the subsidiary, the*
8 *nature or size of transactions between such*
9 *subsidiary and any depository institution*
10 *affiliate, or the centralization of functions*
11 *within the holding company system, could*
12 *have a materially adverse effect on the safe-*
13 *ty and soundness of any depository institu-*
14 *tion affiliate of the subsidiary or of the*
15 *holding company.*

16 *“(C) DEFERENCE TO BANK EXAMINA-*
17 *TIONS.—The Board shall, to the fullest extent*
18 *possible, use the report of examinations of depos-*
19 *itory institutions made by the Comptroller of the*
20 *Currency, the Federal Deposit Insurance Cor-*
21 *poration, the Office of Thrift Supervision or the*
22 *appropriate State depository institution super-*
23 *visory authority for the purposes of this section.*

24 *“(D) DEFERENCE TO OTHER EXAMINA-*
25 *TIONS.—The Board shall, to the fullest extent*

possible, use the reports of examination made of—

“(i) any registered broker or dealer by or on behalf of the Securities Exchange Commission, and

“(ii) any other subsidiary that the Board finds to be comprehensively supervised under relevant Federal or State law by a Federal or state agency or authority.

“(E) CONFIDENTIALITY OF REPORTED INFORMATION.—

“(i) IN GENERAL.—Notwithstanding any other provision of law, the Board shall not be compelled to disclose any information required to be reported under this paragraph, or any information supplied to the Board by any domestic or foreign regulatory agency, that relates to the financial or operational condition of any financial services holding company or any subsidiary of such company.

“(ii) COMPLIANCE WITH REQUESTS FOR INFORMATION.—No provision of this subparagraph shall be construed as authorizing the Board to withhold information

1 *from Congress, or preventing the Board*
2 *from complying with a request for informa-*
3 *tion from any other Federal department or*
4 *agency for purposes within the scope of such*
5 *department's or agency's jurisdiction, or*
6 *from complying with an order of a court of*
7 *competent jurisdiction in an action brought*
8 *by the United States or the Board.*

9 “(iii) *COORDINATION WITH OTHER*
10 *LAW.—For purposes of section 552 of title 5,*
11 *United States Code, this subparagraph shall*
12 *be considered to be a statute described in*
13 *subsection (b)(3)(B) of such section.*

14 “(iv) *DESIGNATION OF CONFIDENTIAL*
15 *INFORMATION.—In prescribing regulations*
16 *to carry out the requirements of this sub-*
17 *section, the Board shall designate informa-*
18 *tion described in or obtained pursuant to*
19 *this paragraph as confidential information.*

20 “(F) *COSTS.—The cost of any examination*
21 *conducted by the Board under this section may*
22 *be assessed against, and made payable by, such*
23 *holding company.”.*

1 **SEC. 124. HOLDING COMPANY SUPERVISION FOR FINAN-**
 2 **CIAL SERVICES HOLDING COMPANIES EN-**
 3 **GAGED PRIMARILY IN NONBANKING ACTIVI-**
 4 **TIES.**

5 *Section 5 of the Bank Holding Company Act of 1956*
 6 *(12 U.S.C. 1844) is amended by adding at the end the fol-*
 7 *lowing new subsection:*

8 *“(g) REDUCED SUPERVISION OF COMPANIES CON-*
 9 *TROLLING PRINCIPALLY NONDEPOSITORY INSTITUTIONS.—*

10 *“(1) ELECTION.—*

11 *“(A) IN GENERAL.—Any financial services*
 12 *holding company that qualifies under paragraph*
 13 *(2) may make an election to be governed by the*
 14 *approval, capital, reporting and examination re-*
 15 *quirements of paragraphs (3), (4), (5) and (6)*
 16 *by—*

17 *“(i) filing a written notice of such elec-*
 18 *tion with the Board; and*

19 *“(ii) if applicable, providing a written*
 20 *guarantee to the Federal Deposit Insurance*
 21 *Corporation pursuant to paragraph (2).*

22 *“(B) EFFECTIVE PERIOD OF ELECTION.—*
 23 *An election under subparagraph (A) shall re-*
 24 *main in effect—*

1 “(i) so long as the financial services
2 holding company continues to qualify under
3 paragraph (2); or

4 “(ii) until the financial services hold-
5 ing company revokes the election.

6 “(2) CRITERIA FOR ELECTION.—A financial
7 services holding company may make an election
8 under paragraph (1) if the company meets all of the
9 following criteria:

10 “(A) COMPANY PRINCIPALLY CONTROLS
11 NONDEPOSITORY COMPANIES.—

12 “(i) FINANCIAL SERVICES HOLDING
13 COMPANIES WITH DEPOSITORY INSTITU-
14 TIONS.—In the case of a financial services
15 holding company (other than an investment
16 bank holding company), the consolidated
17 total risk-weighted assets of all depository
18 institutions and foreign banks (as defined
19 in section 1(b)(7) of the International
20 Banking Act of 1978) controlled by the fi-
21 nancial services holding company—

22 “(I) constitute less than 10 per-
23 cent of the consolidated total risk-
24 weighted assets of such company; and

25 “(II) are less than \$5,000,000,000.

1 “(ii) *INVESTMENT BANK HOLDING COM-*
2 *PANIES.*—In the case of an investment bank
3 *holding company, the consolidated total*
4 *risk-weighted assets of all wholesale finan-*
5 *cial institutions controlled by the invest-*
6 *ment bank holding company—*

7 “(I) *constitute less than 25 per-*
8 *cent of the consolidated total risk-*
9 *weighted assets of such company; and*

10 “(II) *are less than*
11 *\$15,000,000,000.*

12 “(iii) *INFLATION ADJUSTMENT.*—The
13 *dollar limitation contained in clauses*
14 *(i)(II) and (ii)(II) shall be adjusted annu-*
15 *ally after December 31, 1995, by the annual*
16 *percentage increase in the Consumer Price*
17 *Index for Urban Wage Earners and Clerical*
18 *Workers published by the Bureau of Labor*
19 *Statistics.*

20 “(iv) *AUTHORITY TO INCREASE LIM-*
21 *ITS.*—The Board may increase any of the
22 *percentages referred to in clauses (i)(I) and*
23 *(ii)(I) and the dollar amounts described in*
24 *clauses (i)(II) and (ii)(II) as the Board*
25 *may determine to be appropriate.*

1 “(B) *WELL CAPITALIZED INSTITUTIONS.*—
2 *Each depository institution controlled by the fi-*
3 *ancial services holding company is well capital-*
4 *ized.*

5 “(C) *WELL MANAGED INSTITUTIONS.*—

6 “(i) *IN GENERAL.*—*Each depository*
7 *institution controlled by the financial serv-*
8 *ices holding company received a CAMEL*
9 *composite rating of 1 or 2 (or an equivalent*
10 *rating under an equivalent rating system)*
11 *in the most recent examination of such in-*
12 *stitution.*

13 “(ii) *EXCLUSION FOR NEWLY AC-*
14 *QUIRED INSTITUTIONS.*—*A depository insti-*
15 *tution acquired by a financial services hold-*
16 *ing company during the 12-month period*
17 *ending on the date of the election by such*
18 *company under paragraph (1) may be ex-*
19 *cluded for purposes of clause (i) if the fi-*
20 *ancial services holding company has devel-*
21 *oped a plan acceptable to the appropriate*
22 *Federal banking agency (for such institu-*
23 *tion) to restore the capital and management*
24 *of the institution.*

25 “(D) *HOLDING COMPANY GUARANTEE.*—

1 “(i) *IN GENERAL.*—*The financial serv-*
2 *ices holding company provides a written*
3 *guarantee acceptable to the Federal Deposit*
4 *Insurance Corporation to maintain the cap-*
5 *ital levels of each insured depository insti-*
6 *tution controlled by the financial services*
7 *holding company at not less than the levels*
8 *required for such institution to remain well*
9 *capitalized.*

10 “(ii) *LIMITATION ON LIABILITY.*—*The*
11 *liability of a financial services holding com-*
12 *pany under a guarantee provided under*
13 *this subparagraph shall not exceed an*
14 *amount equal to 10 percent of the total risk-*
15 *weighted assets of the insured depository in-*
16 *stitution, measured as of the date that the*
17 *institution becomes undercapitalized.*

18 “(iii) *DURATION OF GUARANTEE.*—
19 *Notwithstanding paragraph (1), a financial*
20 *services holding company that has elected*
21 *treatment under this subsection shall con-*
22 *tinue to be bound by the guarantee made*
23 *under this subsection until released in ac-*
24 *cordance with this subparagraph.*

1 “(iv) *RELEASE FROM LIABILITY.*—The
2 *Board shall release a financial services*
3 *holding company from the guarantee appli-*
4 *cable with respect to any depository institu-*
5 *tion subsidiary of such company—*

6 “(I) *upon the written request of*
7 *the financial services holding company*
8 *to revoke the company’s election under*
9 *paragraph (1) if the Board determines*
10 *that each depository institution con-*
11 *trolled by the financial services holding*
12 *company is well capitalized and well*
13 *managed at the time of such revoca-*
14 *tion;*

15 “(II) *in the case of a financial*
16 *services holding company which no*
17 *longer meets the requirements of sub-*
18 *paragraph (A), upon a determination*
19 *by the Board that each depository in-*
20 *stitution controlled by the financial*
21 *services holding company is well cap-*
22 *italized and well managed;*

23 “(III) *upon the written request of*
24 *the financial services holding company*
25 *following the divestiture of control of*

1 *the depository institution in a trans-*
2 *action that does not require Federal as-*
3 *stance if the Board determines that,*
4 *immediately following the divestiture,*
5 *the depository institution is or will be*
6 *well capitalized; or*

7 *“(IV) upon a determination by*
8 *the Board, after consultation with the*
9 *Federal Deposit Insurance Corpora-*
10 *tion, that, subject to the limit on liabil-*
11 *ity provided in clause (ii), the finan-*
12 *cial services holding company has fully*
13 *performed under the guarantee.*

14 “(E) *RESPONSIVENESS TO COMMUNITY*
15 *NEEDS.—The lead insured depository institution*
16 *subsidiary of the financial services holding com-*
17 *pany and insured depository institutions con-*
18 *trolling at least 80 percent of the aggregate total*
19 *risk-weighted assets of insured depository institu-*
20 *tions controlled by the financial services holding*
21 *company have achieved a ‘satisfactory record of*
22 *meeting community credit needs’, or better, dur-*
23 *ing the most recent examination of such insured*
24 *depository institutions.*

1 “(3) NO NOTICE OR APPROVAL REQUIRED FOR
2 CERTAIN PURPOSES UNDER PARAGRAPHS (8), (13), OR
3 (15) OF SECTION 4(C).—

4 “(A) IN GENERAL.—Notwithstanding para-
5 graphs (8), (13), and, in the case of an invest-
6 ment bank holding company, (15) of section 4(c),
7 a financial services holding company that has in
8 effect an election under paragraph (1), and any
9 subsidiary of such holding company, may, with-
10 out prior notice to, or the approval of, the Board
11 under paragraph (8), (13), or, in the case of an
12 investment bank holding company, (15) of sec-
13 tion 4(c), engage de novo in any activity, or ac-
14 quire shares of any company engaged in any ac-
15 tivity, if—

16 “(i) the Board has determined, by
17 order or regulation in effect at the time the
18 company or subsidiary commences to en-
19 gage in such activity or acquire such shares,
20 that the activity is permissible for a finan-
21 cial services holding company or a subsidi-
22 ary of such company to engage in under
23 paragraph (8) or (13) of section 4(c) (and
24 regulations prescribed under such para-
25 graphs); and

1 “(ii) the activity is conducted in com-
2 pliance with all conditions and limitations
3 applicable to such activity under any regu-
4 lation, order, or advisory opinion prescribed
5 or issued by the Board.

6 “(B) *SUBSEQUENT NOTICE*.—A financial
7 services holding company that commences to en-
8 gage in an activity, or makes an acquisition, in
9 accordance with subparagraph (A) shall inform
10 the Board of such fact, in writing, not later than
11 10 days after commencing the activity or con-
12 summing the acquisition.

13 “(4) *CAPITAL*.—

14 “(A) *IN GENERAL*.—The Board shall not
15 (by regulation or order), directly or indirectly,
16 establish or apply minimum capital require-
17 ments to a financial services holding company
18 which has in effect an election under paragraph
19 (1) unless the Board concludes, on the basis of all
20 information available to the Board, that the fi-
21 nancial services holding company is not main-
22 taining sufficient financial resources to meet
23 fully any guarantee required under paragraph
24 (2).

1 “(B) *CRITERIA FOR CONSIDERATION.*—For
2 purposes of making a determination under sub-
3 paragraph (A), the Board shall consider, in ad-
4 dition to any other relevant considerations, the
5 financial condition and the adequacy of the cap-
6 ital of each of the depository institutions con-
7 trolled by the financial services holding com-
8 pany.

9 “(5) *REPORTS.*—

10 “(A) *IN GENERAL.*—The reporting require-
11 ments contained in subsection (c)(2) shall apply
12 to a financial services holding company which
13 qualifies under this subsection, to the extent pro-
14 vided by the Board.

15 “(B) *EXEMPTIONS FROM REPORTING RE-*
16 *QUIREMENTS.*—

17 “(i) *IN GENERAL.*—The Board may, by
18 regulation or order, exempt any company
19 or class of companies, under such terms and
20 conditions and for such periods as the
21 Board shall provide in such regulation or
22 order, from the provisions of this paragraph
23 and any regulations prescribed under this
24 paragraph.

1 “(ii) *CRITERIA FOR CONSIDERATION.*—

2 *In granting any exemption under clause (i),*
3 *the Board shall consider, among other fac-*
4 *tors—*

5 “(I) *whether information of the*
6 *type required under this paragraph is*
7 *available from a supervisory agency*
8 *(as defined in section 1101(7) of the*
9 *Right to Financial Privacy Act of*
10 *1978), the Commodity Futures Trad-*
11 *ing Commission, or a foreign regu-*
12 *latory body of a similar type;*

13 “(II) *the primary business of the*
14 *company; and*

15 “(III) *the nature and extent of do-*
16 *mestic or foreign regulations of the*
17 *company’s activities.*

18 “(6) *EXAMINATIONS.*—

19 “(A) *LIMITED USE OF EXAMINATION AU-*
20 *THORITY FOR FINANCIAL SERVICES HOLDING*
21 *COMPANIES.*—*The Board shall not examine,*
22 *under this section, any financial services holding*
23 *company described in paragraph (2)(A)(i) for*
24 *which an election is in effect under paragraph*

1 (1) or any subsidiary (other than a depository
2 institution) of such holding company unless—

3 “(i) the Board determines, on the basis
4 of all information available to the Board,
5 that—

6 “(I) the operations or activities of
7 the financial services holding company
8 or any subsidiary of such company, or
9 any transaction involving such com-
10 pany or subsidiary and an affiliated
11 depository institution, may pose a ma-
12 terial risk to the safety and soundness
13 of any depository institution owned by
14 such holding company; or

15 “(II) the financial services hold-
16 ing company does not appear to have
17 sufficient resources to meet the guaran-
18 tee required under paragraph (2); or

19 “(ii) the Board is unable to accomplish
20 the purposes described in subsection
21 (c)(3)(A) without such examinations.

22 “(B) LIMITED USE OF EXAMINATION AU-
23 THORITY FOR INVESTMENT BANK HOLDING COM-
24 PANIES.—The Board shall not examine, under
25 this section, any investment bank holding com-

pany described in paragraph (2)(A)(ii) which has an election in effect under paragraph (1) or any subsidiary (other than a depository institution) of such holding company unless—

“(i) the Board determines that the operations or activities of the investment bank holding company or any subsidiary of such company, or any transaction involving such company or subsidiary and an affiliated depository institution, may pose a material risk to the safety and soundness of any depository institution owned by such holding company; or

“(ii) the Board is unable to determine from reports the nature of the operations, financial condition, activities, or effectiveness of the risk management systems of the investment bank holding company or any subsidiary of such company, or to assess compliance with the provisions of this Act and those governing transactions and relationships between any depository institution controlled by the investment bank holding company and the investment bank holding company or any of such subsidiaries.

1 “(C) *RESTRICTED FOCUS AND DEFERENCE*
 2 *IN EXAMINATIONS.*—*The Board shall limit the*
 3 *focus and scope of any examination, under this*
 4 *section, of a financial services holding company*
 5 *or investment bank holding company for which*
 6 *an election is in effect under paragraph (1) or*
 7 *of any subsidiary (other than a depository insti-*
 8 *tution) of such holding company and shall defer*
 9 *to examinations conducted by the Securities Ex-*
 10 *change Commission or other supervisors in ac-*
 11 *cordance with subparagraphs (B), (C), and (D)*
 12 *of subsection (c)(3).”.*

13 ***SEC. 125. CONVERSION OF UNITARY SAVINGS AND LOAN***
 14 ***HOLDING COMPANIES TO FINANCIAL SERV-***
 15 ***ICES HOLDING COMPANIES.***

16 *The Bank Holding Company Act of 1956 (12 U.S.C.*
 17 *1841 et seq.) is amended by inserting after section 5 the*
 18 *following new section:*

19 ***“SEC. 6. CONVERSION OF UNITARY SAVINGS AND LOAN***
 20 ***HOLDING COMPANIES TO FINANCIAL SERV-***
 21 ***ICES HOLDING COMPANIES.***

22 “(a) *STREAMLINED PROCEDURE FOR CONVERSION.*—
 23 “(1) *IN GENERAL.*—*During the 18-month period*
 24 *beginning on the date of the enactment of the Finan-*
 25 *cial Services Competitiveness Act of 1995, no ap-*

1 *proval shall be required under section 3(a) or para-*
2 *graph (8) or (13) of section 4(c) for any qualified sav-*
3 *ings and loan holding company to become a financial*
4 *services holding company for any company that, both*
5 *prior to January 1, 1995, and on the date of enact-*
6 *ment of the Financial Services Competitiveness Act of*
7 *1995, is a savings and loan holding company if the*
8 *requirements of paragraph (2) are met.*

9 “(2) *ELIGIBILITY REQUIREMENTS.*—A qualified
10 *savings and loan holding company shall be eligible to*
11 *become a financial services holding company pursu-*
12 *ant to paragraph (1) if—*

13 “(A) *the company becomes a financial serv-*
14 *ices holding company as the result of the conver-*
15 *sion of a savings association controlled by such*
16 *company as of the date of enactment of the Fi-*
17 *nancial Services Competitiveness Act of 1995*
18 *into a bank;*

19 “(B) *the company is adequately capitalized*
20 *before and immediately after the conversion re-*
21 *ferred to in subparagraph (A);*

22 “(C) *all depository institutions controlled*
23 *by such company are well capitalized before and*
24 *immediately after such conversion;*

1 “(D) all depository institutions controlled
2 by such company are well managed before the
3 conversion;

4 “(E) the Board would not be prohibited
5 under any provision of section 3(d) from approv-
6 ing the transaction;

7 “(F) the activities of the company and of
8 each subsidiary of the company comply with this
9 Act (and regulations prescribed under this Act);
10 and

11 “(G) the company provides the Board with
12 at least 30 days written notice of the proposed
13 conversion, and, before the expiration of such 30-
14 day period, the Board has not objected to the
15 company becoming a financial services holding
16 company based on the criteria contained in this
17 subsection.

18 “(3) QUALIFIED SAVINGS AND LOAN HOLDING
19 COMPANY DEFINED.—For purposes of this subsection,
20 the term ‘qualified savings and loan holding com-
21 pany’ means any company which became a savings
22 and loan holding company before January 1, 1995,
23 and is a savings and loan holding company as of the
24 date of the enactment of the Financial Services Com-
25 petitiveness Act of 1995.

1 “(b) *LIMITED RETENTION OF EXISTING INVEST-*
2 *MENTS.*—Any holding company which converts to a finan-
3 *cial services holding company in accordance with subsection*
4 *(a) may retain direct or indirect ownership or control of*
5 *voting shares of any company as provided in, and subject*
6 *to, section 4(k) if—*

7 “(1) *the holding company controlled 1 or more*
8 *savings associations in accordance with section*
9 *10(c)(3) of the Home Owners Loan Act before Janu-*
10 *ary 1, 1995, and as of the date of the enactment of*
11 *the Financial Services Competitiveness Act of 1995;*

12 “(2) *the investment in voting shares and the fi-*
13 *nancial services holding company meet the require-*
14 *ments of section 4(k) (other than paragraph*
15 *(1)(A)(iii) of such section); and*

16 “(3) *more than 75 percent of the revenues of the*
17 *financial services holding company for each of the 2*
18 *calendar years before the date such company became*
19 *a financial services holding company involved securi-*
20 *ties activities described in subparagraphs (A) and (B)*
21 *of section 10(a)(1) and activities that the Board has*
22 *determined to be permissible under section 4(c)(8).”.*

1 **SEC. 126. FINANCIAL SERVICES ADVISORY COMMITTEE.**

2 (a) *ESTABLISHMENT.*—There is hereby established the
3 *Financial Services Advisory Committee* (hereinafter in this
4 section referred to as the “Committee”).

5 (b) *MEMBERSHIP.*—

6 (1) *IN GENERAL.*—The Committee shall consist
7 of 9 members, appointed as follows from among indi-
8 viduals who are not officers or employees of the Fed-
9 eral Government and who are especially qualified to
10 serve on such committee by virtue of their education,
11 training, or experience:

12 (A) 1 member appointed by the Secretary of
13 the Treasury.

14 (B) 2 members appointed by the Comptrol-
15 ler of the Currency.

16 (C) 2 members appointed by the Director of
17 the Office of Thrift Supervision.

18 (D) 2 members appointed by the Board of
19 Governors of the Federal Reserve System.

20 (E) 2 members appointed by the Board of
21 Directors of the Federal Deposit Insurance Cor-
22 poration.

23 (2) *REPRESENTATION OF SMALL AND INDEPEND-*
24 *ENT DEPOSITORY INSTITUTIONS.*—Of the members ap-
25 pointed under subparagraphs (B), (C), (D), and (E)
26 of paragraph (1), 1 of the 2 members appointed under

1 *each such paragraph shall be appointed from among*
2 *individuals who are especially qualified to represent*
3 *the interests of depository institutions which—*

4 (A) *have total assets of less than*
5 *\$500,000,000; or*

6 (B) *are not controlled by any depository in-*
7 *stitution holding company.*

8 (c) *VACANCIES.—Any vacancy on the Committee shall*
9 *be filled in the same manner in which the original appoint-*
10 *ment was made.*

11 (d) *PAY AND EXPENSES.—Members of the Committee*
12 *shall serve without pay, but each member shall be reim-*
13 *bursed for expenses incurred in connection with attendance*
14 *of such members at meetings of the Committee by the agency*
15 *which appointed such member to the Committee.*

16 (e) *TERMS.—Members shall be appointed for terms of*
17 *1 year.*

18 (f) *AUTHORITY OF THE COMMITTEE.—The Committee*
19 *may select a chairperson, vice chairperson, and secretary,*
20 *and adopt methods of procedure, and shall have power—*

21 (1) *to confer with each Federal banking agency*
22 *on general and special business conditions and regu-*
23 *latory and other matters relating to the financial*
24 *services industry in the United States and the impact*
25 *of this Act, and the amendments made by this Act, on*

1 *the financial service industry, especially with regard*
2 *to depository institutions described in subsection*
3 *(b)(2); and*

4 *(2) to request information from, and to make*
5 *recommendations to, each of the Federal banking*
6 *agencies with respect to matters within the jurisdic-*
7 *tion of such agency.*

8 *(g) MEETINGS.—The Committee shall meet at least 2*
9 *times each year at the call of the chairperson or a majority*
10 *of the members.*

11 *(h) REPORTS.—The Committee shall submit a semi-*
12 *annual written report to the Committee on Banking and*
13 *Financial Services of the House and to the Committee on*
14 *Banking, Housing, and Urban Affairs of the Senate. Such*
15 *report shall describe the activities of the Committee for such*
16 *semiannual period and contain such recommendations as*
17 *the Committee considers appropriate.*

18 *(i) PROVISION OF STAFF AND OTHER RESOURCES.—*
19 *Each of the Federal banking agencies shall provide the Com-*
20 *mittee with the use of such resources, including staff, as the*
21 *Committee reasonably shall require to carry out its duties,*
22 *including the preparation and submission of reports to*
23 *Congress, under this section.*

24 *(j) DEFINITIONS.—The terms “insured depository in-*
25 *stitution” and “Federal banking agencies” have the mean-*

1 *ing given to such terms in section 3 of the Federal Deposit*
 2 *Insurance Act.*

3 *(k) FEDERAL ADVISORY COMMITTEE ACT DOES NOT*
 4 *APPLY.—The Federal Advisory Committee Act shall not*
 5 *apply to the Committee.*

6 *(l) SUNSET.—The Committee shall cease to exist 10*
 7 *years after the enactment of this section.*

8 **SEC. 127. COORDINATION WITH STATE LAW.**

9 *Except as specifically provided in section 109, no pro-*
 10 *vision of this Act, and no amendment made by this Act*
 11 *to any other provision of law, may be construed as super-*
 12 *seding any provision of the law of any State which imposes*
 13 *additional requirements or establishes higher standards for*
 14 *the safe and sound operation and condition of depository*
 15 *institutions (as defined in section 3 of the Federal Deposit*
 16 *Insurance Act) and the protection of consumers than the*
 17 *requirements imposed or the standards established under*
 18 *this Act and the amendments made by this Act to other*
 19 *provisions of law (including capital standards and other*
 20 *safeguards placed on affiliates).*

21 **SEC. 128. CONFORMING AMENDMENTS TO THE BANK HOLD-**
 22 **ING COMPANY ACT OF 1956.**

23 *(a) SHORT TITLE; TABLE OF CONTENTS.—The first*
 24 *section of the Bank Holding Company Act of 1956 (12*
 25 *U.S.C. 1841 nt.) is amended to read as follows:*

1 **“SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 “(a) *SHORT TITLE.*—This Act may be cited as the ‘Fi-

3 *ancial Services Holding Company Act of 1995’.*

4 “(b) *TABLE OF CONTENTS.*—The table of contents for

5 *this Act is as follows:*

“Sec. 1. *Short title; table of contents.*

“Sec. 2. *Definitions.*

“Sec. 3. *Acquisition of bank shares or assets.*

“Sec. 4. *Interests in nonbanking organizations.*

“Sec. 5. *Administration.*

“Sec. 6. *Conversion of unitary savings and loan holding companies to financial services holding companies.*

“Sec. 7. *Reservation of rights to States.*

“Sec. 8. *Penalties.*

“Sec. 9. *Judicial review.*

“Sec. 10. *Securities activities.*

“Sec. 11. *Safeguards relating to securities activities.*

“Sec. 12. *Investment bank holding companies and other financial activities.*

“Sec. 13. *Saving provision.*

“Sec. 14. *Separability of provisions.*

6 “(c) *REFERENCES IN OTHER LAWS.*—Any reference in

7 *any Federal or State law to a provision of the Bank Hold-*

8 *ing Company Act of 1956 shall be deemed to be a reference*

9 *to the corresponding provision of this Act.’’.*

10 (b) *DEFINITIONS.*—

11 (1) *Subsection (n) of section 2 of the Bank Hold-*

12 *ing Company Act of 1956 (12 U.S.C. 1841(n)) is*

13 *amended by inserting “‘depository institution’, ” be-*

14 *fore “‘insured depository institution’”.*

15 (2) *Subsection (o) of section 2 of the Bank Hold-*

16 *ing Company Act of 1956 (12 U.S.C. 1841(o)) is*

17 *amended—*

1 (A) by striking paragraph (1) and inserting
2 the following new paragraph:

3 “(1) *LEAD DEPOSITORY INSTITUTION*.—The term
4 ‘lead depository institution’ means the largest depository
5 institution controlled by the financial services
6 holding company, based on a comparison of the average
7 total assets controlled by each depository institution
8 during the previous 12-month period.”; and

9 (B) by adding at the end the following new
10 paragraphs:

11 “(8) *INSURED DEPOSITORY INSTITUTION FOR*
12 *CERTAIN SECTIONS*.—Notwithstanding subsection (n),
13 the terms ‘depository institution’ and ‘insured depository
14 institution’ include, for purposes of paragraph
15 (1) and sections 4(k), 10, and 11, any branch, agency,
16 or commercial lending company operated in the United
17 States by a foreign bank.

18 “(9) *WELL MANAGED*.—The term ‘well managed’
19 means—

20 “(A) in the case of any company or depository
21 institution which receives examinations, the
22 achievement of—

23 “(i) a CAMEL composite rating of 1
24 or 2 (or an equivalent rating under an
25 equivalent rating system) in connection

1 *with the most recent examination or subse-*
 2 *quent review of such company or institu-*
 3 *tion; and*

4 *“(ii) at least a satisfactory rating for*
 5 *management, if such rating is given; or*

6 *“(B) in the case of a company or depository*
 7 *institution that has not received an examination*
 8 *rating, the existence and use of managerial re-*
 9 *sources which the Board determines are satisfac-*
 10 *tory.”.*

11 *(3) Section 2 of the Bank Holding Company Act*
 12 *of 1956 (12 U.S.C. 1841) (as amended by section*
 13 *116(a)(1) of this Act) is amended by inserting after*
 14 *subsection (o) the following new subsections:*

15 *“(p) SECURITIES AFFILIATE.—The term ‘securities af-*
 16 *filiate’ means any company—*

17 *“(1) that is (or is required to be) registered*
 18 *under the Securities Exchange Act of 1934 as a broker*
 19 *or dealer; and*

20 *“(2) the acquisition or retention of the shares or*
 21 *assets of which the Board has approved under section*
 22 *10.*

23 *“(q) CAPITAL TERMS.—*

24 *“(1) DEPOSITORY INSTITUTIONS.—With respect*
 25 *to depository institutions, the terms ‘well capitalized,’*

1 *‘adequately capitalized’ and ‘undercapitalized’ have*
2 *the meanings given to such terms in accordance with*
3 *section 38(b) of the Federal Deposit Insurance Act.*

4 *“(2) FINANCIAL SERVICES HOLDING COMPANY.—*
5 *The following definitions shall apply with respect to*
6 *financial services holding companies:*

7 *“(A) ADEQUATELY CAPITALIZED.—The term*
8 *‘adequately capitalized’ means a level of capital-*
9 *ization which meets or exceeds the required mini-*
10 *mum level established by the Board for each rel-*
11 *evant capital measure for financial services hold-*
12 *ing companies.*

13 *“(B) WELL CAPITALIZED.—The term ‘well*
14 *capitalized’ means a level of capitalization which*
15 *meets or exceeds the required capital levels estab-*
16 *lished by the Board for well capitalized financial*
17 *services holding companies.*

18 *“(3) OTHER CAPITAL TERMS.—The terms ‘tier 1’*
19 *and ‘risk-weighted assets’ have the meaning given*
20 *those terms in the capital guidelines or regulations*
21 *established by the Board for financial services holding*
22 *companies.*

23 *“(r) FOREIGN BANK TERMS.—For purposes of sub-*
24 *sections (s) and (u), sections 4(k), 10, and 11, and sub-*
25 *sections (b) and (c) of section 12—*

1 “(1) the terms ‘agency’, ‘branch’, and ‘commer-
 2 cial lending company’ have the same meaning as in
 3 section 1(b) of the International Banking Act of 1978.

4 “(2) the term ‘foreign bank’ means a foreign
 5 bank (as defined in section 1(b) of the International
 6 Banking Act of 1978) which operates a branch, agen-
 7 cy or commercial lending company, or owns or con-
 8 trols a bank, in the United States.”.

9 (c) AMENDMENT REGARDING CONDITIONAL APPROVAL
 10 OF NOTICES.—Section 4(a)(2) of the Bank Holding Com-
 11 pany Act of 1956 (12 U.S.C. 1843(a)(2)) is amended by
 12 striking “paragraph (8)” and all that follows through “is-
 13 sued by the Board under such paragraph” and inserting
 14 “subsection (c)(8) or section 4(k), 10, or 11, subject to all
 15 the conditions specified in those provisions or in any order
 16 or regulation issued by the Board under those provisions”.

17 (d) AMENDMENT TO NOTICE PROCEDURES.—Section
 18 4(j) of the Bank Holding Company Act of 1956 (12 U.S.C.
 19 1843(j)) is amended—

20 (1) in paragraph (1)(A), by striking “subsection
 21 (c)(8) or (a)(2)” and inserting “subsection (a)(2),
 22 (c)(8), (c)(15), or (k)”;

23 (2) in paragraph (1)(E)—

1 (A) by striking “subsection (c)(8) or (a)(2)”
2 and inserting “subsection (a)(2), (c)(8), (c)(15),
3 or (k)”; and

4 (B) by striking the last sentence and insert-
5 ing the following: “In no event may the Board,
6 without the agreement of the financial services
7 holding company submitting the notice, extend
8 the notice period under this subparagraph be-
9 yond the period that ends 180 days after the date
10 that a notice is filed with the Board or the rel-
11 evant Federal reserve bank in accordance with
12 the regulations of the Board.”; and

13 (3) in paragraph (2), by redesignating subpara-
14 graphs (B) and (C) as subparagraphs (C) and (D),
15 respectively, and inserting after subparagraph (A) the
16 following new subparagraph:

17 “(B) CRITERIA FOR NOTICES INVOLVING SE-
18 CURITIES AFFILIATES.—In considering any no-
19 tice that involves the acquisition of shares of a
20 securities affiliate pursuant to section 4(c)(15),
21 the Board shall apply the criteria and safe-
22 guards contained in this paragraph and in sec-
23 tions 10 and 11.”.

1 (e) *ELIMINATION OF OBSOLETE PROVISIONS.*—The
2 *Bank Holding Company Act of 1956 (12 U.S.C. 1841*
3 *through 1849) is amended—*

4 (1) *in section 4(a)(2)—*

5 (A) *by striking “or in the case of a com-*
6 *pany” and ending “after December 31, 1980,”;*
7 *and*

8 (B) *by striking the sentence beginning “Not-*
9 *withstanding any other provision of this para-*
10 *graph”;*

11 (2) *in section 4(b), by striking “After two years*
12 *from the date of enactment of this Act, no” and in-*
13 *serting “No”; and*

14 (3) *in section 5(a)—*

15 (A) *by striking “Within one hundred and*
16 *eighty days after the date of enactment of this*
17 *Act, or within” and inserting “Within”; and*

18 (B) *by striking “whichever is later,”.*

19 (f) *CONFORMING AMENDMENTS.*—The *Bank Holding*
20 *Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended*
21 *as follows:*

22 (1) *In section 3(c)(4), by striking “one-bank*
23 *holding company” each place such term appears and*
24 *inserting “1-bank financial services holding com-*
25 *pany”.*

1 (2) In section 3(f)(5), by striking “bank holding
2 company” the first and second time such term ap-
3 pears and inserting “financial services holding com-
4 pany”.

5 (3) In section 4(i)(3)(A), by striking “is ac-
6 quired” and inserting “was acquired”.

7 (4) By striking “bank holding companies” each
8 place such appears in the following sections and in-
9 serting “financial services holding companies”:

10 (A) Section 3(d).

11 (B) Section 4(f).

12 (C) Section 7(a).

13 (5) By striking “bank holding company’s” each
14 place such term appears in section 4(c)(14) and in-
15 serting “financial services holding company’s”.

16 (6) By striking “bank holding company” each
17 place such term appears in the following sections and
18 inserting “financial services holding company”:

19 (A) Subsections (a), (d), (e), (g), (h), and
20 (o) of section 2.

21 (B) Subsections (a), (b), (d), (f)(1), (f)(2),
22 and (f)(3) of section 3.

23 (C) Subsections (a), (d), (e), (g), (h), and (j)
24 of section 4.

1 (D) Clause (ii) in the portion of section 4(c)
2 which precedes paragraph (1) of such section.

3 (E) Paragraphs (2), (3), (7), (8), (10), (11),
4 (12)(A), and (14) of section 4(c).

5 (F) Paragraphs (4), (5), and (9) of section
6 4(f).

7 (G) Paragraphs (1) and (2) of section 4(i).

8 (H) Sections 5, 7(b), 8, and 11.

9 (7) In section 4(f)(1), by striking “bank holding
10 company” the 2d place such term appears and insert-
11 ing “financial services holding company”.

12 (8) In the headings for section 3(f) and 4(f), by
13 striking “BANK HOLDING” and inserting “FINANCIAL
14 SERVICES HOLDING”.

15 (9) In the heading the heading for section
16 2(o)(7), by striking “BANK” and inserting “FINANCIAL
17 SERVICES”.

18 (g) TREATMENT OF EXISTING BANK HOLDING COMPA-
19 NIES.—Section 2(a)(6) of the Bank Holding Company Act
20 of 1956 (12 U.S.C. 1841(a)(6)) is amended by inserting at
21 the end the following: “Any company that was a bank hold-
22 ing company on the day before the date of enactment of
23 the Financial Services Competitiveness Act of 1995 shall,
24 for purposes of this chapter, be deemed to have been a finan-

1 *cial services holding company as of the date on which the*
 2 *company became a bank holding company.”.*

3 *(h) OTHER REFERENCES.—Any reference in any Fed-*
 4 *eral law to “bank holding company” or “bank holding com-*
 5 *panies” as those terms were defined under the Bank Hold-*
 6 *ing Company Act of 1956 before the enactment of this Act*
 7 *shall be deemed to include a reference to “financial services*
 8 *holding company” and “financial services holding compa-*
 9 *nies”, respectively, as such terms are defined under the Fi-*
 10 *ancial Services Holding Company Act of 1995.*

11 ***SEC. 129. CONFORMING AMENDMENTS TO THE BANK HOLD-***
 12 ***ING COMPANY ACT AMENDMENTS OF 1970.***

13 *Section 106 of the Bank Holding Company Act*
 14 *Amendments of 1970 (12 U.S.C. 1971 through 1978) is*
 15 *amended by striking “bank holding company” each place*
 16 *such term appears and inserting “financial services holding*
 17 *company”.*

18 ***SEC. 130. CREDIT CARDS FOR BUSINESS PURPOSES.***

19 *Section 2(c)(2)(F) of the Bank Holding Company Act*
 20 *of 1956 (relating to the definition of credit card banks) is*
 21 *amended—*

22 *(1) in clause (i), by inserting “including the pro-*
 23 *vision of credit card accounts for business purposes”*
 24 *before the semicolon; and*

1 (2) in clause (v), by inserting “(other than the
 2 provision of credit card accounts for business pur-
 3 poses in connection with the credit card operations re-
 4 ferred to in clause (i))” before the period.

5 **Subtitle D—Interagency Banking**
 6 **and Financial Services Advisory**
 7 **Committee**

8 **SEC. 141. INTERAGENCY BANKING AND FINANCIAL SERV-**
 9 **ICES ADVISORY COMMITTEE.**

10 (a) *ESTABLISHMENT; COMPOSITION.*—There is estab-
 11 lished the Banking and Financial Services Advisory Com-
 12 mittee which shall consist of 6 members as follows:

13 (1) *The Secretary of the Treasury.*

14 (2) *The Chairman of the Board of Governors of*
 15 *the Federal Reserve System.*

16 (3) *The Chairperson of the Board of Directors of*
 17 *the Federal Deposit Insurance Corporation.*

18 (4) *The Chairman of the Securities and Ex-*
 19 *change Commission.*

20 (5) *The Chairperson of the Commodities Futures*
 21 *Trading Commission.*

22 (6) *The Comptroller of the Currency.*

23 (b) *CHAIRPERSON.*—The chairperson of the Committee
 24 shall be the Secretary of the Treasury.

1 (c) *DESIGNATION OF OFFICERS AND EMPLOYEES.*—
2 *The members of the Committee may, from time to time, des-*
3 *ignate other officers or employees of their respective agencies*
4 *to carry out their duties on the Committee.*

5 (d) *COMPENSATION AND EXPENSES.*—*Each member of*
6 *the Committee shall serve without additional compensation*
7 *but shall be entitled to reasonable expenses incurred in car-*
8 *rying out official duties as a member.*

9 (e) *FUNCTION OF THE COMMITTEE.*—

10 (1) *IN GENERAL.*—*The Committee shall meet as*
11 *appropriate to consider matters of mutual interest to*
12 *the members and to consider making recommenda-*
13 *tions to the Board of Governors of the Federal Reserve*
14 *System regarding the types of activities that may be*
15 *financial in nature for purposes of the Financial*
16 *Services Holding Company Act and to the Comptrol-*
17 *ler of the Currency regarding the types of activities*
18 *that may be incidental to banking for purposes of sec-*
19 *tion 5136 of the Revised Statutes of the United States.*

20 (2) *CONSIDERATION OF RECOMMENDATIONS.*—
21 *The Board of Governors of the Federal Reserve Sys-*
22 *tem and the Comptroller of the Currency, as appro-*
23 *priate, shall take into account any recommendation*
24 *made to the respective agency by the Committee and,*

1 *if the agency does not adopt the recommendation,*
2 *shall provide a written explanation to the Committee.*

3 *(f) IMPROVING THE SUPERVISION, EFFICIENCY, AND*
4 *COMPETITIVENESS OF THE FINANCIAL SERVICES INDUS-*
5 *TRY.—*

6 *(1) IN GENERAL.—The Committee shall seek to*
7 *improve the supervision, efficiency, and competitive-*
8 *ness of the financial services industry by making rec-*
9 *ommendations for such legislative or administrative*
10 *action as the Committee determines to be appropriate*
11 *to the Congress, each agency or office represented by*
12 *a member on the Committee, and other agencies or de-*
13 *partments of the United States, including rec-*
14 *ommendations for changes in law and in the regula-*
15 *tions, policies, and procedures of any department or*
16 *agency.*

17 *(2) PRINTING IN FEDERAL REGISTER.—Rec-*
18 *ommendations from paragraph (1) shall be printed in*
19 *the Federal Register and submitted to the Committee*
20 *on Banking and Financial Services of the House of*
21 *Representatives and the Committee on Banking,*
22 *Housing, and Urban Affairs of the Senate.*

1 **TITLE II—FUNCTIONAL**
2 **REGULATION**
3 **Subtitle A—Brokers and Dealers**

4 **SEC. 201. DEFINITION OF BROKER.**

5 (a) *IN GENERAL.*—Section 3(a)(4) of the Securities
6 Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) is amended to
7 read as follows:

8 “(4) *BROKER.*—

9 “(A) *IN GENERAL.*—The term ‘broker’
10 means any person engaged in the business of
11 effecting transactions in securities for the ac-
12 count of others.

13 “(B) *EXCLUSION OF BANKS.*—The term
14 ‘broker’ does not include a bank unless such
15 bank—

16 “(i) publicly solicits the business of
17 effecting securities transactions for the ac-
18 count of others;

19 “(ii) is compensated for such business
20 by the payment of commissions or similar
21 remuneration based on effecting trans-
22 actions in securities (other than fees cal-
23 culated as a percentage of assets under
24 management) in excess of the bank’s incre-
25 mental costs directly attributable to

1 *effecting such transactions (hereafter re-*
2 *ferred to as ‘incentive compensation’); or*

3 *“(iii) is a separately identifiable de-*
4 *partment or division of the bank.*

5 *“(C) EXEMPTION FOR CERTAIN BANK AC-*
6 *TIVITIES.—A bank shall not be deemed to be a*
7 *broker because it engages in any of the following*
8 *activities under the conditions described:*

9 *“(i) THIRD PARTY BROKERAGE AR-*
10 *RANGEMENTS.—The bank enters into a con-*
11 *tractual or other arrangement with a broker*
12 *or dealer registered under this title under*
13 *which the broker or dealer offers brokerage*
14 *services on or off the premises of the bank*
15 *if—*

16 *“(I) such broker or dealer is clear-*
17 *ly identified as the person performing*
18 *the brokerage services;*

19 *“(II) the broker or dealer performs*
20 *brokerage services in an area that is*
21 *clearly marked and, unless made im-*
22 *possible by space or personnel consider-*
23 *ations, physically separate from the*
24 *routine deposit-taking activities of the*
25 *bank;*

1 “(III) any materials used by the
2 bank to advertise or promote generally
3 the availability of brokerage services
4 under the contractual or other arrange-
5 ment clearly indicate that the broker-
6 age service are being provided by the
7 broker or dealer and not by the bank;

8 “(IV) any materials used by the
9 bank to advertise or promote generally
10 the availability of brokerage services
11 under the contractual or other arrange-
12 ment are in compliance with the Fed-
13 eral securities laws before distribution;

14 “(V) bank employees perform only
15 clerical or ministerial functions in
16 connection with brokerage transactions,
17 including scheduling appointments
18 with the associated persons of a broker
19 or dealer and, on behalf of a broker or
20 dealer, transmitting orders or handling
21 customers funds or securities, except
22 that bank employees who are not so
23 qualified may describe in general terms
24 investment vehicles under the contrac-
25 tual or other arrangement and accept

1 *customer orders on behalf of the broker*
2 *or dealer if such employees have re-*
3 *ceived training that is substantially*
4 *equivalent to the training required for*
5 *personnel qualified to sell securities*
6 *pursuant to the requirements of a self-*
7 *regulatory organization (as defined in*
8 *section 3(a) of the Securities Exchange*
9 *Act of 1934);*

10 *“(VI) bank employees do not di-*
11 *rectly receive incentive compensation*
12 *for any brokerage transaction unless*
13 *such employees are associated persons*
14 *of a broker or dealer and are qualified*
15 *pursuant to the requirements of a self-*
16 *regulatory organization (as so defined)*
17 *except that the bank employees may re-*
18 *ceive nominal cash and noncash com-*
19 *penetration for customer referrals if the*
20 *cash compensation is a 1-time fee of a*
21 *fixed dollar amount and the payment*
22 *of the fee is not contingent on whether*
23 *the referral results in a transaction;*

24 *“(VII) such services are provided*
25 *by the broker or dealer on a basis in*

1 *which all customers which receive any*
2 *services are fully disclosed to the broker*
3 *or dealer; and*

4 *“(VIII) the broker or dealer in-*
5 *forms each customer that the brokerage*
6 *services are provided by the broker or*
7 *dealer and not by the bank and that*
8 *the securities are not deposits or other*
9 *obligations of the bank, are not guar-*
10 *anteed by the bank, and are not in-*
11 *sured by the Federal Deposit Insurance*
12 *Corporation.*

13 *“(ii) TRUST ACTIVITIES.—The bank*
14 *engages in trust activities (including*
15 *effecting transactions in the course of such*
16 *trust activities) permissible for national*
17 *banks under the first section of the Act of*
18 *September 28, 1962, or for State banks*
19 *under relevant State trust statutes or law*
20 *(including securities safekeeping, self-di-*
21 *rected individual retirement accounts, or*
22 *managed agency accounts or other function-*
23 *ally equivalent accounts of a bank) unless*
24 *the bank—*

1 “(I) publicly solicits brokerage
2 business, other than by advertising that
3 it effects transactions in securities in
4 conjunction with advertising its other
5 trust activities; or

6 “(II) receives incentive compensa-
7 tion for such brokerage activities.

8 “(iii) *PERMISSIBLE SECURITIES*
9 *TRANSACTIONS.*—The bank effects trans-
10 actions in exempted securities, other than
11 municipal securities, or in commercial
12 paper, bankers acceptances, commercial
13 bills, qualified Canadian Government obli-
14 gations as defined in section 5136 of the Re-
15 vised Statutes, obligations of the Washington
16 Metropolitan Area Transit Authority which
17 are guaranteed by the Secretary of Trans-
18 portation under section 9 of the National
19 Capital Transportation Act of 1969, obliga-
20 tions of the North American Development
21 Bank, and obligations of any local public
22 agency (as defined in section 110(h) of the
23 Housing Act of 1949) or any public housing
24 agency (as defined in the United States
25 Housing Act of 1937) that are expressly au-

1 *thorized by section 5136 of the Revised Stat-*
2 *utes of the United States as permissible for*
3 *a national bank to underwrite or deal in.*

4 “(iv) *MUNICIPAL SECURITIES.*—*The*
5 *bank effects transactions in municipal secu-*
6 *rities.*

7 “(v) *EMPLOYEE AND SHAREHOLDER*
8 *BENEFIT PLANS.*—*The bank effects trans-*
9 *actions as part of any bonus, profit-sharing,*
10 *pension, retirement, thrift, savings, incen-*
11 *tive, stock purchase, stock ownership, stock*
12 *appreciation, stock option, dividend rein-*
13 *vestment, or similar plan for employees or*
14 *shareholders of an issuer or its subsidiaries.*

15 “(vi) *SWEEP ACCOUNTS.*—*The bank ef-*
16 *fects transactions as part of a program for*
17 *the investment or reinvestment of bank de-*
18 *posit funds into any no-load, open-end*
19 *management investment company registered*
20 *under the Investment Company Act of 1940*
21 *that holds itself out as a money market*
22 *fund.*

23 “(vii) *AFFILIATE TRANSACTIONS.*—*The*
24 *bank effects transactions for the account of*
25 *any affiliate of the bank, as defined in sec-*

1 *tion 2 of the Financial Services Holding*
2 *Company Act of 1995.*

3 “(viii) *PRIVATE SECURITIES OFFER-*
4 *INGS.—The bank—*

5 “(I) *effects sales as part of a pri-*
6 *mary offering of securities by an is-*
7 *suer, not involving a public offering,*
8 *pursuant to section 3(b), 4(2), or 4(6)*
9 *of the Securities Act of 1933 and the*
10 *rules and regulations issued there-*
11 *under;*

12 “(II) *effects such sales exclusively*
13 *to an accredited investor, as defined in*
14 *section 3 of the Securities Act of 1933;*
15 *and*

16 “(III) *if affiliated with a securi-*
17 *ties affiliate, as provided under section*
18 *10 of the Financial Services Holding*
19 *Company Act of 1995—*

20 “(aa) *has not been so affili-*
21 *ated for more than 1 year; or*

22 “(bb) *effects such sales*
23 *through a separately identifiable*
24 *department or division that itself*
25 *shall be deemed to be a broker.*

1 “(ix) *DE MINIMIS EXEMPTION.*—If the
2 bank does not have a subsidiary or affiliate
3 registered as a broker or dealer under sec-
4 tion 15, the bank effects, other than in
5 transactions referenced in clauses (i)
6 through (viii), not more than—

7 “(I) 800 transactions in any cal-
8 endar year in securities for which a
9 ready market exists, and

10 “(II) 200 other transactions in se-
11 curities in any calendar year.

12 “(x) *SAFEKEEPING AND CUSTODY*
13 *SERVICES.*—The bank, as part of customary
14 banking activities—

15 “(I) provides safekeeping or cus-
16 tody services with respect to securities,
17 including the exercise of warrants or
18 other rights on behalf of customers;

19 “(II) clears or settles transactions
20 in securities;

21 “(III) effects securities lending or
22 borrowing transactions with or on be-
23 half of customers as part of services
24 provided to customers pursuant to
25 subclauses (I) and (II) or invests cash

1 *collateral pledged in connection with*
2 *such transactions; or*

3 “(IV) *holds securities pledged by 1*
4 *customer to another customer or securi-*
5 *ties subject to resale agreements be-*
6 *tween customers or facilitates the*
7 *pledging or transfer of such securities*
8 *by book entry.*

9 “(xi) *BANKING PRODUCTS.—The bank*
10 *effects transactions that have been deter-*
11 *mined pursuant to section 10(k)(3)(C) to be*
12 *more appropriately treated as banking*
13 *products, if the bank effects such trans-*
14 *actions through a separately identifiable de-*
15 *partment or division that itself shall be*
16 *deemed to be a broker.*

17 “(D) *EXEMPTION FOR ENTITIES SUBJECT*
18 *TO SECTION 15(e).—The term ‘broker’ does not*
19 *include a bank that—*

20 “(i) *was, immediately prior to the en-*
21 *actment of the Financial Services Competi-*
22 *tiveness Act of 1995, subject to section 15(e);*
23 *and*

1 “(ii) is subject to such restrictions and
2 requirements as the Commission deems ap-
3 propriate.”.

4 (b) *SEPARATELY IDENTIFIABLE DEPARTMENT OR DI-*
5 *VISION DEFINED.*—Section 3(a) of the Securities Exchange
6 Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at
7 the end the following new paragraph:

8 “(54) For purposes of paragraphs (4) and (5),
9 the term ‘separately identifiable department or divi-
10 sion’ of a bank means a unit—

11 “(A) that is under the direct supervision of
12 an officer or officers designated by the board of
13 directors of the bank as responsible for the day-
14 to-day conduct of the bank’s activities, including
15 the supervision of all bank employees engaged in
16 the performance of such activities; and

17 “(B) for which all of the records relating to
18 its activities described in paragraphs (4) and (5)
19 are separately maintained in or extractable from
20 such unit’s own facilities or the facilities of the
21 bank, and such records are so maintained or oth-
22 erwise accessible as to permit independent exam-
23 ination and enforcement of this Act and rules
24 and regulations promulgated under this Act.”.

1 (c) *REGULATION.*—Section 15(c) of the Securities Ex-
 2 change Act of 1934 (15 U.S.C. 78o(c)) is amended by add-
 3 ing at the end the following new paragraph:

4 “(8)(A) The Commission may prescribe rules,
 5 after consultation with and considering the views of
 6 the appropriate Federal banking agencies, with re-
 7 spect to a broker or dealer that is a separately identi-
 8 fiable department or division of a bank as the Com-
 9 mission finds necessary in the public interest or for
 10 the protection of investors to take into account the
 11 characteristics of a separately identifiable department
 12 or division of a bank.

13 “(B) If a bank of which a separately identifiable
 14 department or division is a part is adequately cap-
 15 italized (as defined by the bank’s appropriate Federal
 16 banking agency), the separately identifiable depart-
 17 ment or division that is a broker or dealer shall be
 18 deemed to be in compliance with the net capital rules
 19 adopted pursuant to paragraph (3).”.

20 **SEC. 202. DEFINITION OF DEALER.**

21 Section 3(a)(5) of the Securities Exchange Act of 1934
 22 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

23 “(5) *DEALER.*—

24 “(A) *IN GENERAL.*—The term ‘dealer’
 25 means any person engaged in the business of

1 *buying and selling securities for his own account*
2 *through a broker or otherwise.*

3 “(B) *EXCEPTIONS.*—*Such term does not in-*
4 *clude—*

5 “(i) *a person that buys or sells securi-*
6 *ties for such person’s own account, either*
7 *individually or in a fiduciary capacity, but*
8 *not as a part of a regular business; or*

9 “(ii) *a bank, to the extent that the*
10 *bank—*

11 “(I) *buys and sells commercial*
12 *paper, bankers acceptances, exempted*
13 *securities (other than municipal secu-*
14 *rities), qualified Canadian Govern-*
15 *ment obligations as defined in section*
16 *5136 of the Revised Statutes, obliga-*
17 *tions of the Washington Metropolitan*
18 *Area Transit Authority which are*
19 *guaranteed by the Secretary of Trans-*
20 *portation under section 9 of the Na-*
21 *tional Capital Transportation Act of*
22 *1969, obligations of the North Amer-*
23 *ican Development Bank, and obliga-*
24 *tions of any local public agency (as de-*
25 *fin ed in section 110(h) of the Housing*

1 *Act of 1949) or any public housing*
2 *agency (as defined in the United States*
3 *Housing Act of 1937) that are ex-*
4 *pressly authorized by section 5136 of*
5 *the Revised Statutes of the United*
6 *States as permissible for a national*
7 *bank to underwrite or deal in;*

8 *“(II) buys and sells municipal se-*
9 *curities;*

10 *“(III) buys and sells securities for*
11 *investment purposes for the bank or for*
12 *accounts for which the bank acts as a*
13 *trustee or fiduciary;*

14 *“(IV) engages in the issuance or*
15 *sale of designated asset-back securities*
16 *through a grantor trust or otherwise*
17 *and—*

18 *“(aa) has not been affiliated*
19 *with a securities affiliate under*
20 *section 10 of the Financial Serv-*
21 *ices Holding Company Act of*
22 *1995 for more than 1 year; or*

23 *“(bb) effects such trans-*
24 *actions through a separately iden-*
25 *tifiable department or division*

1 that itself shall be deemed to be a
2 dealer; or

3 “(V) buys and sells securities that
4 have been determined pursuant to sec-
5 tion 10(k)(3)(C) to be more appro-
6 priately treated as banking products, if
7 a separately identifiable department or
8 division that itself is deemed to be a
9 broker or dealer for purposes of this
10 Act engages in such purchases and
11 sales.

12 “(C) DESIGNATED ASSET-BACKED SECURI-
13 TIES DEFINED.—For purposes of subparagraph
14 (B)(ii)(IV), the term ‘designated asset-backed se-
15 curities’ means—

16 “(i) securities backed by or represent-
17 ing an interest in 1–4 family residential
18 mortgages originated or purchased by the
19 bank, its affiliates, or its subsidiaries; and

20 “(ii) securities backed by or represent-
21 ing an interest in consumer receivables or
22 consumer leases originated or purchased by
23 the bank, its affiliates, or its subsidiaries.”.

1 **SEC. 203. POWER TO EXEMPT FROM THE DEFINITIONS OF**
2 **BROKER AND DEALER.**

3 *Section 3 of the Securities Exchange Act of 1934 (15*
4 *U.S.C. 78c) is amended by adding at the end the following:*

5 “(e) *EXEMPTION FROM DEFINITION OF BROKER OR*
6 *DEALER.—The Commission, by regulation or order, upon*
7 *its own motion or upon application, may conditionally or*
8 *unconditionally exclude any person or class of persons from*
9 *the definitions of ‘broker’ or ‘dealer’, if the Commission*
10 *finds that such exclusion is consistent with the public inter-*
11 *est, the protection of investors, and the purposes of this*
12 *title.’’.*

13 **SEC. 204. MARGIN REQUIREMENTS.**

14 *(a) Section 7(d) of the Securities Exchange Act of 1934*
15 *(15 U.S.C. 15g(d)) is amended by striking “or (E)” and*
16 *inserting “(E) to a loan to a broker or dealer by a member*
17 *bank or any other person that has entered into an agree-*
18 *ment pursuant to section 8(a) if the proceeds of the loan*
19 *are to be used in the ordinary course of the broker’s or deal-*
20 *er’s business other than for the purpose of funding the pur-*
21 *chase of securities for the account of such broker or dealer,*
22 *or (F)’’.*

23 *(b) Section 8(a) of the Securities and Exchange Act*
24 *of 1934 is amended—*

25 *(1) by striking “nonmember bank” and inserting*
26 *“person other than a member bank”; and*

1 (2) by striking “such bank” in the second sen-
 2 tence and inserting “such person”.

3 **SEC. 205. EFFECTIVE DATE.**

4 *This subtitle shall become effective 270 days after the*
 5 *date of enactment of this Act.*

6 ***Subtitle B—Bank Investment***
 7 ***Company Activities***

8 **SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY**
 9 ***AFFILIATED BANK.***

10 (a) *MANAGEMENT COMPANIES.*—Section 17(f) of the
 11 *Investment Company Act of 1940 (15 U.S.C. 80a–17(f)) is*
 12 *amended—*

13 (1) *by redesignating paragraphs (1), (2), and (3)*
 14 *as subparagraphs (A), (B), and (C), respectively;*

15 (2) *by striking “(f) Every registered” and insert-*
 16 *ing “(f) CUSTODY OF SECURITIES.—*

17 *“(1) Every registered”;*

18 (3) *by designating the 2d, 3d, 4th, and 5th sen-*
 19 *tences of such subsection as paragraphs (2) through*
 20 *(5), respectively, and indenting the left margin of*
 21 *such paragraphs appropriately; and*

22 (4) *by adding at the end the following new para-*
 23 *graph:*

24 *“(6) Notwithstanding any provision of this sub-*
 25 *section, if a bank described in paragraph (1) or an*

1 *affiliated person of such bank is an affiliated person,*
2 *promoter, organizer, or sponsor of, or principal un-*
3 *derwriter for the registered company, such bank may*
4 *serve as custodian under this subsection in accordance*
5 *with such rules, regulations, or orders as the Commis-*
6 *sion may prescribe, consistent with the protection of*
7 *investors, after consulting in writing with the appro-*
8 *priate Federal banking agency, as defined in section*
9 *3 of the Federal Deposit Insurance Act.”.*

10 **(b) UNIT INVESTMENT TRUSTS.**—Section 26(a)(1) of
11 *the Investment Company Act of 1940 (15 U.S.C. 80a–*
12 *26(a)(1)) is amended by inserting before the semicolon at*
13 *the end the following: “, except that, if the trustee or custo-*
14 *dian described in this subsection is an affiliated person of*
15 *such underwriter or depositor, the Commission may adopt*
16 *rules and regulations or issue orders, consistent with the*
17 *protection of investors, prescribing the conditions under*
18 *which such trustee or custodian may serve, after consulting*
19 *in writing with the appropriate Federal banking agency*
20 *(as defined in section 3 of the Federal Deposit Insurance*
21 *Act)”.*

22 **(c) FIDUCIARY DUTY OF CUSTODIAN.**—Section 36(a)
23 *of the Investment Company Act of 1940 (15 U.S.C. 80a–*
24 *35(a)) is amended—*

1 (1) in paragraph (1), by striking “or” at the
2 end;

3 (2) in paragraph (2), by striking the period at
4 the end and inserting “; or “; and

5 (3) by inserting after paragraph (2) the follow-
6 ing:

7 “(3) as custodian.”.

8 **SEC. 212. INDEBTEDNESS TO AFFILIATED PERSON.**

9 Section 10(f) of the Investment Company Act of 1940
10 (15 U.S.C. 80a–10(f)) is amended—

11 (1) in the 1st sentence, by striking “issuer) a
12 principal underwriter” and inserting “issuer)—

13 “(1) a principal underwriter”; and

14 (2) by striking “for the issuer. The Commission”
15 and inserting “for the issuer; or

16 “(2) the issuer of which has a material lending
17 relationship with the adviser of such registered invest-
18 ment company or any person controlling, controlled
19 by, or under common control with the adviser in con-
20 travention of such rules, regulations, or orders as the
21 Commission may prescribe in the public interest and
22 consistent with the protection of investors.

23 The Commission”.

1 **SEC. 213. LENDING TO AN AFFILIATED INVESTMENT COM-**
 2 **PANY.**

3 *Section 18 of the Investment Company Act of 1940 (15*
 4 *U.S.C. 80a-18) is amended by adding at the end the follow-*
 5 *ing:*

6 *“(l) Notwithstanding any provision of this section, it*
 7 *shall be unlawful for any affiliated person of a registered*
 8 *investment company or any affiliated person of such a per-*
 9 *son to loan money to such investment company in con-*
 10 *travention of such rules, regulations, or orders as the Com-*
 11 *mission may prescribe in the public interest and consistent*
 12 *with the protection of investors.”.*

13 **SEC. 214. INDEPENDENT DIRECTORS.**

14 *(a) IN GENERAL.—Section 2(a)(19)(A) of the Invest-*
 15 *ment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(A))*
 16 *is amended—*

17 *(1) by striking clause (v) and inserting the fol-*
 18 *lowing new clause:*

19 *“(v) any person (other than a reg-*
 20 *istered investment company) that, at any*
 21 *time during the preceding 6 months, has ex-*
 22 *ecuted any portfolio transactions for, en-*
 23 *gaged in any principal transactions with,*
 24 *or distributed shares for—*

25 *“(I) the investment company,*

1 “(II) any other investment com-
2 pany having the same investment ad-
3 viser as such investment company or
4 holding itself out to investors as a re-
5 lated company for purposes of invest-
6 ment or investor services, or

7 “(III) any account over which the
8 investment company’s investment ad-
9 viser has brokerage placement discre-
10 tion,

11 or any affiliated person of such a person,”;

12 (2) by redesignating clause (vi) as clause (vii);

13 and

14 (3) by inserting after clause (v) the following
15 new clause:

16 “(vi) any person (other than a reg-
17 istered investment company) that, at any
18 time during the preceding 6 months, has
19 loaned money to—

20 “(I) the investment company,

21 “(II) any other investment com-
22 pany having the same investment ad-
23 viser as such investment company or
24 holding itself out to investors as a re-

1 lated company for purposes of invest-
 2 ment or investor services, or
 3 “(III) any account for which the
 4 investment company’s investment ad-
 5 viser has borrowing authority,
 6 or any affiliated person of such a person,
 7 or”.

8 (b) *AFFILIATION OF DIRECTORS.*—Section 10(c) of the
 9 Investment Company Act of 1940 (15 U.S.C. 80a–10(c)) is
 10 amended by striking “bank, except” and inserting “bank
 11 (and its subsidiaries) or any single financial services hold-
 12 ing company (and its affiliates and subsidiaries), as those
 13 terms are defined in the Financial Services Holding Com-
 14 pany Act of 1995, except”.

15 (c) *EFFECTIVE DATE.*—The provisions of subsection
 16 (a) of this section shall become effective 1 year after the
 17 date of enactment of this subtitle.

18 **SEC. 215. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

19 (a) *MISREPRESENTATION.*—Section 35(a) of the In-
 20 vestment Company Act of 1940 (15 U.S.C. 80a–34(a)) is
 21 amended to read as follows:

22 “(a) *MISREPRESENTATION OF GUARANTEES.*—

23 “(1) *IN GENERAL.*—It shall be unlawful for any
 24 person, issuing or selling any security of which a reg-
 25 istered investment company is the issuer, to represent

1 or imply in any manner whatsoever that such secu-
2 rity or company—

3 “(A) has been guaranteed, sponsored, rec-
4 ommended, or approved by the United States, or
5 any agency, instrumentality or officer of the
6 United States;

7 “(B) has been insured by the Federal De-
8 posit Insurance Corporation; or

9 “(C) is guaranteed by or is otherwise an ob-
10 ligation of any bank or insured depository insti-
11 tution.

12 “(2) DISCLOSURES.—Any person issuing or sell-
13 ing the securities of a registered investment company
14 shall prominently disclose that the investment com-
15 pany or any security issued by the investment com-
16 pany—

17 “(A) is not insured by the Federal Deposit
18 Insurance Corporation;

19 “(B) is not guaranteed by an affiliated in-
20 sured depository institution; and

21 “(C) is not otherwise an obligation of any
22 bank or insured depository institution,
23 in accordance with such rules, regulations, or orders
24 as the Commission may prescribe as reasonably nec-
25 essary or appropriate in the public interest for the

1 *protection of investors, after consulting in writing*
2 *with the appropriate Federal banking agencies.*

3 “(3) *DEFINITIONS.*—The terms ‘insured deposi-
4 *tory institution’ and ‘appropriate Federal banking*
5 *agency’ have the meanings given to such terms in sec-*
6 *tion 3 of the Federal Deposit Insurance Act.’.*”

7 “(b) *DECEPTIVE USE OF NAMES.*—Section 35(d) of the
8 *Investment Company Act of 1940 (15 U.S.C. 80a–34(d))*
9 *is amended to read as follows:*

10 “(d)(1) *It shall be unlawful for any registered invest-*
11 *ment company to adopt as part of the name or title of such*
12 *company, or of any securities of which it is the issuer, any*
13 *word or words that the Commission finds are materially*
14 *deceptive or misleading. The Commission may adopt such*
15 *rules or regulations or issue such orders as are necessary*
16 *or appropriate to prevent the use of deceptive or misleading*
17 *names or titles by investment companies.*

18 “(2) *It shall be deceptive and misleading for any reg-*
19 *istered investment company (A) that is an affiliated person*
20 *of a bank or an affiliated person of such a person, or (B)*
21 *for which a bank or an affiliated person of a bank acts*
22 *as investment adviser, sponsor, promoter, or principal un-*
23 *derwriter, to adopt, as part of the name or title of such*
24 *company, or of any security of which it is an issuer, any*
25 *word that is the same or similar to, or a variation of, the*

1 *name or title of such bank or affiliated person thereof, in*
2 *contravention of such rules, regulations, or orders as the*
3 *Commission may prescribe as necessary or appropriate in*
4 *the public interest or for the protection of investors.”.*

5 **SEC. 216. DEFINITION OF BROKER UNDER THE INVEST-**
6 **MENT COMPANY ACT OF 1940.**

7 *Section 2(a)(6) of the Investment Company Act of*
8 *1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as follows:*

9 *“(6) ‘Broker’ has the same meaning as in the Se-*
10 *curities Exchange Act of 1934, except that it does not*
11 *include any person solely by reason of the fact that*
12 *such person is an underwriter for 1 or more invest-*
13 *ment companies.”.*

14 **SEC. 217. DEFINITION OF DEALER UNDER THE INVESTMENT**
15 **COMPANY ACT OF 1940.**

16 *Section 2(a)(11) of the Investment Company Act of*
17 *1940 (15 U.S.C. 80a-2(a)(11)) is amended to read as fol-*
18 *lows:*

19 *“(11) The term ‘dealer’ has the same meaning as*
20 *in the Securities Exchange Act of 1934, but does not*
21 *include an insurance company or investment com-*
22 *pany.”.*

1 **SEC. 218. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**
 2 **TION OF INVESTMENT ADVISER FOR BANKS**
 3 **THAT ADVISE INVESTMENT COMPANIES.**

4 (a) *INVESTMENT ADVISER.*—Section 202(a)(11) of the
 5 *Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11))*
 6 *is amended in subparagraph (A), by striking “investment*
 7 *company” and inserting “investment company, except that*
 8 *the term ‘investment adviser’ includes any bank or finan-*
 9 *cial services holding company to the extent that such bank*
 10 *or financial services holding company acts as an investment*
 11 *adviser to a registered investment company, or if, in the*
 12 *case of a bank, such services are performed through a sepa-*
 13 *rately identifiable department or division, the department*
 14 *or division, and not the bank itself, shall be deemed to be*
 15 *the investment adviser”.*

16 (b) *SEPARATELY IDENTIFIABLE DEPARTMENT OR DI-*
 17 *VISION.*—Section 202(a) of the *Investment Advisers Act of*
 18 *1940 (15 U.S.C. 80b–2(a)) is amended by adding at the*
 19 *end the following:*

20 “(25) The term ‘separately identifiable depart-

21 *ment or division’ of a bank means a unit—*

22 “(A) *that is under the direct supervision of*
 23 *an officer or officers designated by the board of*
 24 *directors of the bank as responsible for the day-*
 25 *to-day conduct of the bank’s investment adviser*
 26 *activities for 1 or more investment companies,*

1 including the supervision of all bank employees
2 engaged in the performance of such activities;
3 and

4 “(B) for which all of the records relating to
5 its investment adviser activities are separately
6 maintained in or extractable from such unit’s
7 own facilities or the facilities of the bank, and
8 such records are so maintained or otherwise ac-
9 cessible as to permit independent examination
10 and enforcement of this Act or the Investment
11 Company Act of 1940 and rules and regulations
12 promulgated under this Act or the Investment
13 Company Act of 1940.”.

14 **SEC. 219. DEFINITION OF BROKER UNDER THE INVEST-**
15 **MENT ADVISERS ACT OF 1940.**

16 Section 202(a)(3) of the Investment Advisers Act of
17 1940 (15 U.S.C. 80b-2(a)(3)) is amended to read as follows:

18 “(3) The term ‘broker’ has the same meaning as
19 in the Securities Exchange Act of 1934.”.

20 **SEC. 220. DEFINITION OF DEALER UNDER THE INVESTMENT**
21 **ADVISERS ACT OF 1940.**

22 Section 202(a)(7) of the Investment Advisers Act of
23 1940 (15 U.S.C. 80b-2(a)(7)) is amended to read as follows:

24 “(7) The term ‘dealer’ has the same meaning as
25 in the Securities Exchange Act of 1934, but does not

1 *include an insurance company or investment com-*
2 *pany.”.*

3 **SEC. 221. INTERAGENCY CONSULTATION.**

4 *The Investment Advisers Act of 1940 (15 U.S.C. 80b–*
5 *1 et seq.) is amended by inserting after section 210 the fol-*
6 *lowing new section:*

7 **“SEC. 210A. CONSULTATION.**

8 *“(a) EXAMINATION RESULTS AND OTHER INFORMA-*
9 *TION.—*

10 *“(1) The appropriate Federal banking agency*
11 *shall provide the Commission upon request the results*
12 *of any examination, reports, records, or other infor-*
13 *mation as each may have access to with respect to the*
14 *investment advisory activities of any financial serv-*
15 *ices holding company, bank, or separately identifiable*
16 *department or division of a bank, that is registered*
17 *under section 203 of this title, or, in the case of a fi-*
18 *nancial services holding company or bank, that has*
19 *a subsidiary or a separately identifiable department*
20 *or division registered under that section, to the extent*
21 *necessary for the Commission to carry out its statu-*
22 *tory responsibilities.*

23 *“(2) The Commission shall provide to the appro-*
24 *priate Federal banking agency upon request the re-*
25 *sults of any examination, reports, records, or other*

1 *information with respect to the investment advisory*
 2 *activities of any financial services holding company,*
 3 *bank, or separately identifiable department or divi-*
 4 *sion of a bank, any of which is registered under sec-*
 5 *tion 203 of this title, to the extent necessary for the*
 6 *agency to carry out its statutory responsibilities.*

7 *“(b) EFFECT ON OTHER AUTHORITY.—Nothing herein*
 8 *shall limit in any respect the authority of the appropriate*
 9 *Federal banking agency with respect to such financial serv-*
 10 *ices holding company, bank, or department or division*
 11 *under any provision of law.*

12 *“(c) DEFINITION.—For purposes of this section, the*
 13 *term ‘appropriate Federal banking agency’ shall have the*
 14 *same meaning as in section 3 of the Federal Deposit Insur-*
 15 *ance Act.’”.*

16 **SEC. 222. TREATMENT OF BANK COMMON TRUST FUNDS.**

17 *(a) SECURITIES ACT OF 1933.—Section 3(a)(2) of the*
 18 *Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended*
 19 *by striking “or any interest or participation in any com-*
 20 *mon trust fund or similar fund maintained by a bank ex-*
 21 *clusively for the collective investment and reinvestment of*
 22 *assets contributed thereto by such bank in its capacity as*
 23 *trustee, executor, administrator, or guardian” and insert-*
 24 *ing “or any interest or participation in any common trust*
 25 *fund or similar fund that is excluded from the definition*

1 *of the term ‘investment company’ under section 3(c)(3) of*
2 *the Investment Company Act of 1940”.*

3 *(b) SECURITIES EXCHANGE ACT OF 1934.—Section*
4 *3(a)(12)(A)(iii) of the Securities Exchange Act of 1934 (15*
5 *U.S.C. 78c(a)(12)(A)(iii)) is amended to read as follows:*

6 *“(iii) any interest or participation in any*
7 *common trust fund or similar fund that is ex-*
8 *cluded from the definition of the term ‘invest-*
9 *ment company’ under section 3(c)(3) of the In-*
10 *vestment Company Act of 1940;”.*

11 *(c) INVESTMENT COMPANY ACT OF 1940.—Section*
12 *3(c)(3) of the Investment Company Act of 1940 (15 U.S.C.*
13 *80a–3(c)(3)) is amended by inserting before the period the*
14 *following: “, if—*

15 *“(A) such fund is employed by the bank*
16 *solely as an aid to the administration of trusts,*
17 *estates, or other accounts created and main-*
18 *tained for a fiduciary purpose;*

19 *“(B) except in connection with the ordinary*
20 *advertising of the bank’s fiduciary services, in-*
21 *terests in such fund are not—*

22 *“(i) advertised; or*

23 *“(ii) offered for sale to the general pub-*
24 *lic; and*

1 “(C) fees and expenses charged by such fund
2 are not in contravention of fiduciary principles
3 established under applicable Federal or State
4 law”.

5 (d) *TAX EFFECT.*—It is the sense of the Congress that
6 the public interest would be furthered by enacting legisla-
7 tion to amend section 584 of the Internal Revenue Code of
8 1986 by inserting after subsection (h) the following new sub-
9 section:

10 “(i) *CONVERSION, MERGERS, OR REORGANIZATION OF*
11 *COMMON TRUST FUNDS.*—Notwithstanding any other pro-
12 vision of the Internal Revenue Code, any transfer of all or
13 substantially all of the assets of a common trust fund tax-
14 able under this section to a registered investment company
15 taxable under subchapter M shall not result in a gain or
16 loss to the participants in such common trust fund where
17 the transfer is a result of a merger, conversion, reorganiza-
18 tion, transfer, or other similar transaction or series of
19 transactions.”.

20 **SEC. 223. INVESTMENT ADVISERS PROHIBITED FROM HAV-**
21 **ING CONTROLLING INTEREST IN REG-**
22 **ISTERED INVESTMENT COMPANY.**

23 Section 15 of the Investment Company Act of 1940 (15
24 U.S.C. 80a–15) is amended by adding at the end the follow-
25 ing new subsection:

1 “(g) *CONTROLLING INTEREST IN INVESTMENT COM-*
2 *PANY PROHIBITED.*—

3 “(1) *IN GENERAL.*—*If any investment adviser to*
4 *a registered investment company, or an affiliated per-*
5 *son of that investment adviser, holds a controlling in-*
6 *terest in that registered investment company in a*
7 *trustee or fiduciary capacity, such person shall—*

8 “(A) *if it holds the shares in a trustee or fi-*
9 *duciary capacity with respect to any employee*
10 *benefit plan subject to the Employee Retirement*
11 *Income Security Act of 1974, transfer the power*
12 *to vote the shares of the investment company*
13 *through to another person acting in a fiduciary*
14 *capacity with respect to the plan who is not an*
15 *affiliated person of that investment adviser or*
16 *any affiliated person thereof; or*

17 “(B) *if it holds the shares in a trustee or fi-*
18 *duciary capacity with respect to any other per-*
19 *son or entity other than an employee benefit*
20 *plan subject to the Employee Retirement Income*
21 *Security Act of 1974—*

22 “(i) *transfer the power to vote the*
23 *shares of the investment company through*
24 *to—*

1 “(I) the beneficial owners of the
2 shares;

3 “(II) another person acting in a
4 fiduciary capacity who is not an affili-
5 ated person of that investment adviser
6 or any affiliated person thereof; or

7 “(III) any person authorized to
8 receive statements and information
9 with respect to the trust who is not an
10 affiliated person of that investment ad-
11 viser or any affiliated person thereof;

12 “(ii) vote the shares of the investment
13 company held by it in the same proportion
14 as shares held by all other shareholders of
15 the investment company; or

16 “(iii) vote the shares of the investment
17 company as otherwise permitted under such
18 rules, regulations, or orders as the Commis-
19 sion may prescribe for the protection of in-
20 vestors.

21 “(2) EXEMPTION.—Paragraph (1) shall not
22 apply to any investment adviser to a registered in-
23 vestment company, or an affiliated person of that in-
24 vestment adviser, holding shares of the investment
25 company in a trustee or fiduciary capacity if that

1 *registered investment company consists solely of assets*
2 *held in such capacities.*

3 “(3) *SAFE HARBOR.*—No investment adviser to a
4 *registered investment company or any affiliated per-*
5 *son of such investment adviser shall be deemed to have*
6 *acted unlawfully or to have breached a fiduciary duty*
7 *under State or Federal law solely by reason of acting*
8 *in accordance with clause (i), (ii), or (iii) of para-*
9 *graph (1)(B).*

10 “(4) *CHURCH PLAN EXEMPTION.*—Paragraph (1)
11 *shall not apply to any investment adviser to a reg-*
12 *istered investment company, or an affiliated person of*
13 *that investment adviser, holding shares in such a ca-*
14 *capacity, if such investment adviser or such affiliated*
15 *person is an organization described in section*
16 *414(e)(3)(A) of the Internal Revenue Code of 1986.”.*

17 **SEC. 224. CONFORMING CHANGE IN DEFINITION.**

18 *Section 2(a)(5) of the Investment Company Act of*
19 *1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking “(A)*
20 *a banking institution organized under the laws of the Unit-*
21 *ed States” and inserting “(A) a depository institution (as*
22 *defined in section 3 of the Federal Deposit Insurance Act)*
23 *or a branch or agency of a foreign bank (as such terms*
24 *are defined in section 101(b) of the International Banking*
25 *Act of 1978)”.*

1 **SEC. 225. EFFECTIVE DATE.**

2 *This subtitle shall take effect 270 days after the date*
3 *of the enactment of this Act.*

HR 1062 RH—2

HR 1062 RH—3

HR 1062 RH—4

HR 1062 RH—5

HR 1062 RH—6

HR 1062 RH—7

HR 1062 RH—8

HR 1062 RH—9

HR 1062 RH—10

HR 1062 RH—11

HR 1062 RH—12

HR 1062 RH—13

HR 1062 RH—14

HR 1062 RH—15